

**EPA VS. AMERICAN MINING JOBS:
THE OBAMA ADMINISTRATION'S
REGULATORY ASSAULT ON THE
ECONOMY**

OVERSIGHT HEARING

BEFORE THE

SUBCOMMITTEE ON ENERGY AND
MINERAL RESOURCES

OF THE

COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRTEENTH CONGRESS

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**OVERSIGHT HEARING ON: EPA VS. AMERICAN
MINING JOBS: THE OBAMA ADMINISTRA-
TION'S REGULATORY ASSAULT ON THE
ECONOMY**

**Thursday, October 10, 2013
U.S. House of Representatives
Subcommittee on Energy and Mineral Resources
Committee on Natural Resources
Washington, DC**

The subcommittee met, pursuant to notice, at 1:07 p.m., in room 1324, Longworth House Office Building, Hon. Doug Lamborn [Chairman of the Subcommittee] presiding.

Present: Representatives Lamborn, Gohmert, Fleming, Benishek, Flores, Daines, Cramer, Holt, Horsford, Tsongas, Huffman, Lowenthal, Garcia, and DeFazio.

Also Present: Representative Young of Alaska.

Mr. LAMBORN. The committee will come to order. The Chairman notes the presence of a quorum, which, under Committee Rule 3(e), is two Members. The Subcommittee on Energy and Mineral Resources is meeting today to hear testimony on an oversight hearing titled, "EPA vs. American Mining Jobs: the Obama Administration's Regulatory Assault on the Economy."

Under Committee Rule 4(f), opening statements are limited to the Chairman and Ranking Member of the Subcommittee. We will also hear from the Chairman or Ranking Member of the Full Committee, if they are here, and I believe that will be the case for at least one of those gentlemen.

However, I ask unanimous consent to include any other Members' opening statements in the hearing record, if submitted to the Clerk by close of business today.

[No response.]

Mr. LAMBORN. Hearing no objection, so ordered.

Also, I ask unanimous consent that Representative Don Young of Alaska be allowed to participate in today's hearing.

[No response.]

Mr. LAMBORN. Hearing no objection, so ordered.

I now recognize myself.

**STATEMENT OF THE HON. DOUG LAMBORN, A REPRESENTA-
TIVE IN CONGRESS FROM THE STATE OF COLORADO**

Mr. LAMBORN. Last year, we held a hearing on EPA's retroactive veto of the Spruce Coal Mine in Logan County, West Virginia, in 2010. That same year, EPA, at the request of six federally recognized Tribes and commercial fishermen, initiated a watershed assessment of the Bristol Bay watershed in southeastern Alaska, in an effort to derail the development of the world's largest known

hardrock mineral resource: in essence, an effort to preemptively veto mining across a whole region of Alaska.

The watershed assessment covered an area the size of West Virginia, more than 24,000 square miles, and was designed to reach an outcome that the entire region is unsuitable for mining. The assessment was severely criticized by a panel of scientists appointed by EPA to review the document.

Meanwhile, in Chicken, Alaska, an EPA SWAT team of heavily armed and armored agents conducted “paperwork” inspections on small mining operations in what appears to be nothing more than an effort to intimidate and scare hard-working Americans.

This hearing is about the story of how one agency, the Obama administration’s EPA, can single-handedly decide to retroactively pull permits or prospectively veto any operations in areas the size of States and, at the same time, use armed SWAT teams to review permits. All combined, this agency is responsible for destroying 4,000 coal mining jobs between 2011 and 2012, crippling local and State economies, increasing our dependence on foreign sources of minerals, and increasing energy costs for all Americans, seemingly all without consequence.

At the heart of this issue is the lack of confidence in permitting by the Federal Government. If, without cause, an agency can retroactively veto issued permits, or prospectively veto permits not applied for, then how can any company, contractor or concessionaire, have confidence to invest in America, when their permit is not worth the paper it is written on?

And I am not talking just about permits required by the mining industry. The Army Corps of Engineers issues an average of about 60,000 permits annually under the section of the Clean Water Act in question for all types of businesses and industries, including road and highway construction, and commercial and residential real estate. All industries are in danger if the Supreme Court allows the retroactive veto of the Spruce Mine permit to stand.

It gets worse. In 2009, the EPA asked the Navajo Nation permission to withdraw the permit issued in the Desert Rock Energy plant. That \$4 billion investment would have created thousands of jobs, generating tens of millions in revenues for the Navajo Nation, and created the infrastructure for a broad expansion of solar power across Navajo lands. One added bonus would have been the electrification of a broad section of the Navajo Nation, where people currently live without electricity. But that permit, after being issued, was withdrawn by the EPA for review. Needless to say, it has never been reissued, down to this day.

The Obama administration’s “war on coal” can be felt throughout the country, from Logan County, West Virginia, to Farmington, New Mexico. Now it has seemingly expanded to an all-out war on mining jobs, threatening workers from Chicken, Alaska to Superior, Arizona.

Americans deserve better from the EPA. There is no excuse for conducting armed raids on family owned businesses to look for minor permit violations. Retroactively and prospectively vetoing permits, destroying high-paying family wage jobs, adversely affecting government economies, and making Americans more dependent

on foreign sources of mined materials should not be the hallmark of President Obama's policy.

It has been said by someone within the agency that the EPA's job is to crucify American industry, to bring them to heel. From armed raids to random permitting conditions and arbitrary permitting, it appears they are doing their best.

I look forward to hearing from our witnesses today who have, unfortunately, been the victims, in some cases, of this administration. [The prepared statement of Mr. Lamborn follows:]

PREPARED STATEMENT OF THE HON. DOUG LAMBORN, CHAIRMAN, SUBCOMMITTEE ON
ENERGY AND MINERAL RESOURCES

Last year we held a hearing on EPA's retroactive veto of the Spruce Coal Mine in Logan County, West Virginia in 2010. That same year EPA, at the request of six federally recognized Tribes and commercial fishermen, initiated a 'watershed assessment' of the Bristol Bay watershed in Southeastern Alaska in an effort to derail the development of the world's largest known hardrock mineral resource—in essence an effort to preemptively veto mining across a whole region of Alaska.

The watershed assessment covered an area the size of West Virginia, more than 24,000 square miles, and was designed to reach an outcome that the entire region is unsuitable for mining. The assessment was severely criticized by a panel of scientists appointed by EPA to review the document.

Meanwhile, in Chicken, Alaska, an EPA SWAT team of heavily armed and armored agents conducted "paperwork" inspections on small mining operations in what appears nothing more than an effort to intimidate and scare hardworking Americans.

This hearing is the story of how one agency—the Obama administration's EPA—can single-handedly decide to retroactively pull permits, or prospectively veto any operations in areas the size of States, and at the same time use armed SWAT teams to review permits. All combined this agency is responsible for destroying 4,000 coal mining jobs between 2011 and 2012, crippling local and State economies, increasing our dependence on foreign sources of minerals, and increasing energy costs for all Americans—seemingly all without consequence.

At the heart of this issue is the lack of confidence in permitting by the Federal Government. If without cause an agency can retroactively veto issued permits or prospectively veto permits not applied for, then how can any company, contractor or concessionaire have confidence to invest in America when their permit is not worth the paper it is written on? And I'm not talking just about permits required by the mining industry.

The Army Corps of Engineers issues on average about 60,000 permits annually under the section of the Clean Water Act in question for all types of businesses and industries including road and highway construction, and commercial and residential real estate. All industries are in danger if the Supreme Court allows the retroactive veto of the Spruce Mine permit to stand.

At some point in time one has to wonder what the EPA and the administration have against Alaska, and the Appalachian basin, and American coal miners in general, but their attacks on the Navajo Nation are well documented as well.

In 2009, the EPA asked the Navajo Nation permission to withdraw the permit issued to the Desert Rock Energy Plant. That \$4 billion investment would have created thousands of jobs, generated tens of millions in revenues for the Navajo Nation, and created the infrastructure for a broad expansion of solar power across Navajo lands. One added bonus would have been the electrification of a broad section of the Navajo Nation where people currently live without electricity. But that permit, after being issued, was withdrawn by the EPA for review, needless to say, it has never been reissued.

The Obama administration's "war on coal" can be felt throughout the country, from Logan County, West Virginia to Farmington, New Mexico. Now it has seemingly expanded to an all-out "war on mining jobs" threatening workers from Chicken, Alaska, to Superior, Arizona.

Americans deserve better from the EPA. There is no excuse for conducting armed raids on family owned businesses to look for minor permit violations. Retroactively and prospectively vetoing permits, destroying high-paying family wage jobs, adversely affecting government economies, and making Americans more dependent on foreign sources of mined materials should not be the hallmark of the President Obama's policy.

It has been said that the EPA's job is to crucify American industry, to bring them to heel. From armed raids to random permitting conditions, it appears they are doing their best. I look forward to hearing from our witnesses today who have often been the victims of this administration.

Mr. LAMBORN. I now recognize the Ranking Member for his opening statement.

STATEMENT OF THE HON. RUSH HOLT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Dr. HOLT. Thank you, Mr. Chairman. I think it is unfortunate that the Environmental Protection Agency is unable to be here today to present its side of the story. I think it is even more unfortunate that this Republican-led government shutdown has resulted—

Mr. YOUNG. Will the gentleman yield? Let's just get on with this hearing, and quit the politics.

Dr. HOLT [continuing]. Has resulted in the Environmental Protection Agency not being out in the field protecting our air, protecting our water, ensuring that America's most toxic waste sites are properly cleaned up.

I would say, Mr. Chairman, and to the other members of the committee, I think it is completely appropriate in this committee that we talk about what the government should be doing. And so I think that some of my friends on the other side may be pleased at the shutdown's effect, especially those who voted 38 times during the 112th Congress to dismantle the Clean Water Act and other environmental protections. But certainly the families that rely on clean air and safe drinking water and unpolluted lands are less appreciative of the efforts to shut down the government and defund the EPA.

If the EPA were here, they would be able to directly refute the implications of this hearing, I think. We will wait to see how that goes. But I think the facts should be allowed to speak for themselves.

Mining employment is up, and keeps going up. According to the Bureau of Labor Statistics, which is also shut down, there were over 5,000 additional coal mining jobs in 2012 than there were 4 years earlier, a 7 percent increase. There were also 5,000 additional metal or mining jobs in 2012 than 4 years earlier, a significant increase. In fact, the Bureau of Labor Statistics reports that there are more mining jobs during the current administration than there have been in the past 15 years.

Now, since a major focus of this hearing is the situation in Alaska, I think it is worth noting that mining employment in Alaska is up 34 percent since 2008. It has more than doubled since 2004. It is hard to argue with numbers like that.

I do want to thank the witnesses for being here today, particularly given the long distances you have traveled, and the fact that you can't visit the museums and other things here in Washington on this visit. I particularly want to welcome Mr. Van Vactor, former seafood processor and CEO of Bristol Bay Economic Development Corporation.

Coming from New Jersey, I understand the huge importance of fishing to an economy. The commercial and recreational fishing industries in New Jersey bring in over \$8 billion in sales, and support 54,000 jobs. But, as important as fishing is to my own State, that doesn't even begin to describe the importance of fishing to Bristol Bay watershed, where it is, well a good metaphor, the lifeblood of the community.

Bristol Bay's salmon fisheries contribute \$1.5 billion in economic value, and provide half of all the sockeye salmon in the world. The salmon sustains the way of life for Native American tribes throughout the region, and it is one of the staples of their diet. So, any negative impacts on the salmon fishery could be harmful to the economy and to the heritage of the area.

It is my belief that the Bristol Bay watershed is too important and too fragile to allow a massive open-pit mine, industrializing the landscape, and creating long-term waste management challenges. And I think it would put into jeopardy the way of life of dozens of native villages and native residents. And it would threaten fishing jobs and harm a pristine ecosystem.

It is why I believe that it is appropriate for the EPA to carefully study the impacts of the large-scale mining in the region to see if I am right. I told you what I think. I would like to be sure that we get the facts from EPA. Their peer-reviewed scientific watershed assessment is designed to fill gaps in the science and to look at the potential consequences of moving forward with a mine.

EPA has yet to take the first steps required to initiate any restriction under the Clean Water Act, but the Bristol Bay watershed, I think, should be studied. We should look at the science. And efforts to portray the EPA's enforcement as an attack on mining, I think, are misguided.

I look forward to the testimony. Thank you, Mr. Chairman.

[The prepared statement of Dr. Holt follows:]

PREPARED STATEMENT OF THE HON. RUSH D. HOLT, RANKING MEMBER,
SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES

Thank you, Mr. Chairman.

I think it's unfortunate that the Environmental Protection Agency is unable to be here today to present its side of the story. I think it's even more unfortunate that because of this Republican-led government shutdown, the Environmental Protection Agency isn't out in the field protecting our air, protecting our water, and ensuring that America's most toxic waste sites are cleaned up properly.

I think some of my friends from the other side may be pleased at the shutdown's effect on the EPA, especially those who voted 38 times during the 112th Congress to dismantle the Clean Water Act, but certainly the families that rely on clean air, safe drinking water, and unpolluted lands are less appreciative of efforts to shut down the government and defund the EPA.

If the EPA were here, they'd be able to directly refute the dual implications of this hearing: that they are somehow opposed to mining jobs, and that mining jobs are disappearing. Because the facts speak otherwise. Mining employment is up, and keeps going up. According to the Bureau of Labor Statistics—which, I might add, is also shut down because of this Republican House—there were over 5,000 additional coal mining jobs in 2012 than there were in 2008, a 7 percent increase. There were also 5,000 additional metal ore mining jobs in 2012 over 2008, a 13 percent increase. In fact, the BLS reports that there are more mining jobs during the Obama administration than there have been in 15 years.

Since a major focus of this hearing is on the situation in Alaska, it's worth noting that mining employment in Alaska is up a staggering 34 percent since 2008, and has more than doubled since 2004. It is hard to argue with a straight face that

somehow the EPA or this administration is carrying out a, quote, regulatory assault on mining. That simply does not match the facts.

I'd like to thank all the witnesses for being here today, particularly given the great distances many of you traveled, and the fact that you were willing to come to Washington, DC, at a time when some of our best tourist attractions, such as the Smithsonian, are closed.

I'd like to particularly welcome Mr. Van Vactor, a former seafood processor and now CEO of the Bristol Bay Economic Development Corporation, which represents the commercial and recreational fishing interests of Bristol Bay.

Coming from New Jersey, I understand the huge importance of fishing to the economy. The commercial and recreational fishing industries in New Jersey bring in over \$8 billion in sales, and support 54,000 jobs. But as critically important as fishing is to my own State, that doesn't even begin to describe the importance of fishing to the Bristol Bay watershed, where it is not an exaggeration to call it the lifeblood of the community.

The Bristol Bay salmon fishery contributes \$1.5 billion in economic value, and provides half of all the sockeye salmon in the world. But salmon also sustains the way of life for Native American tribes throughout the region. It is one of the staples of their subsistence diet, and it is the basis for their culture. Negative impacts on the salmon fishery could destroy their villages and their heritage.

It is my belief that the Bristol Bay watershed is too important, and too fragile, to allow a massive open-pit mine that will industrialize the landscape, create extremely long-term waste management challenges, put the way of life of dozens of Native villages at risk, and threaten tens of thousands of fishing jobs that depend on a pristine ecosystem.

That is why I believe it is altogether appropriate for the EPA to carefully study the potential impacts of large-scale mining in the region. Their peer-reviewed scientific watershed assessment is designed to fill gaps in the science, and look at the potential consequences of moving forward with a mine.

While the EPA has yet to take the first steps required to initiate any restriction under the Clean Water Act, the fact is that when the company does submit its long-awaited permit application, if it ever does, the Bristol Bay Watershed Assessment will provide crucial science necessary to further analyze the impacts of a specific project.

Efforts to portray the EPA's enforcement of the Clean Water Act as an attack on mining are flat-out misguided. Opponents of the EPA's actions can cherry-pick individual examples that they argue bolster their point, but the truth remains: mining jobs are up during the Obama administration, and the EPA remains committed to making sure that mining is done in a way that protects our air, our water, and our land.

I look forward to the testimony of our witnesses and yield back the balance of my time.

Mr. LAMBORN. Thank you. Since the Full Committee Chairman is not here, we won't hear from him at the moment. If he comes later, we will do so.

And in the meantime, I would like to hear from the Ranking Member of the Full Committee, Representative DeFazio of Oregon.

STATEMENT OF THE HON. PETER DEFAZIO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON

Mr. DEFAZIO. Thank you, Mr. Chairman. I appreciate the fact that we are meeting today in the midst of a government shutdown. We are taking testimony on an issue and an area upon which this committee has no jurisdiction, which would be the Environmental Protection Agency and the Clean Water Act. I do sit on the Transportation and Infrastructure Committee, which does have a good part of that jurisdiction. So, you know, hopefully, if there were real issues to be heard, the T&I Committee would be hearing them, about abuses of the 404 permitting process.

Second, Energy and Commerce also has jurisdiction, but this committee does not. So we are here today to stage a hearing.

I heard some incredible hyperbole, no offense, Mr. Chairman, during the opening remarks. Armed SWAT teams? I am quite familiar with law enforcement. An armed SWAT team is a particular specialty, and they carry automatic weapons, longarms and other things. These were law enforcement agents of both the State of Alaska and the Federal Government entering onto Federal lands, and they were carrying holstered sidearms. That isn't a SWAT team raid. Now let's not get a little overboard here and say that somehow that constitutes a SWAT team. So, and it is routine for law enforcement officers to carry sidearms. And, you know, that has been blown out of proportion.

Second, the issue of the 404 permits. Some people think that if you blow the top off of a giant mountain and you bury 7 miles of a stream, that you are having some impact on water quality. Others don't. Hard to believe, but that is where the EPA acted retroactively to say, well, you know, maybe when the Bush administration said that blowing the top off this mountain and filling in 11 miles of stream had no consequence, you know, in Oregon you can't even drive through a stream in many places. You can't harvest timber approximate to a stream. These people were just going to fill them in. I guess then you don't have a stream any more, so you don't have to worry about the impacts. But a little bit odd to me.

So, to say, gee, they acted somehow arbitrarily in this case is not true. This was a huge and immediate impact and an irrevocable impact. They are not going to put the stream in a culvert, they are not going to dig it up again. And it is going to cause leaching forever.

And then, finally, on that topic, their actions were upheld by the D.C. Circuit Court. Again, this is all out of the jurisdiction of this committee, so we are having a, you know, a pretend hearing here on something that we can't do anything about. But, in any case, I would just like to lay out a few facts.

And finally, Bristol Bay. You know Don and I are going to disagree over Bristol Bay and the potential impacts here. But you are looking at hundreds of thousands of tons of mining debris in the largest open-pit mine in North America that is somehow going to be sequestered forever and not have any impact on the fisheries in Bristol Bay, despite the fact that they would be mining immediately around a number of the major tributaries, and they would, in fact, disrupt some of the major tributaries.

There has been some talk about, "Oh, we will provide some other wetlands, and we will do this, and we will do that." You know, we are going to do geoengineering in order to destroy an environment that is perpetual and balanced and sustainable, and providing more than \$1.5 billion a year of value throughout the economy of Alaska and the West Coast. This impacts fishers from my State, also.

So, you know, this is a very real issue. The EPA put forward a draft report after some concerns. They pulled it back, they wrote another. It is still in peer review. We haven't heard the results yet. But they have not initiated a process, over which this committee has no jurisdiction, yet.

So, that is why we are here today. You know, there are a few other real things out there. I have had timber sales in my district suspended. You know, all across the West, all the timber sales have been suspended on both BLM and Forest Service lands. The king crab fishing fleet is in port, because they can't get their quotas. Real economic impacts because of a war on government by the Republican Party. That is why we are here today.

Thank you very much, Mr. Chairman.

[The prepared statement of Mr. DeFazio follows:]

PREPARED STATEMENT OF RANKING MEMBER PETER A. DEFazio

I'm a bit amazed by this hearing that we're holding today, and not just because this is an issue that is outside of the jurisdiction of our committee. I'm amazed because the majority is trying to portray the EPA as engaging in some sort of "war on mining", when the real war on mining and jobs is currently being waged by the House Republican Majority through their misguided shutdown of the entire Federal Government.

Instead of having Federal permit reviewers approving new mine plans and drilling permits, and instead of having Federal safety and health inspectors out there making sure that existing operations are being done properly, we have hundreds of thousands of employees sitting on their hands because of the antics of a House Republican Majority that wants to delay a health care law they don't like.

For example, in 2012, the Bureau of Land Management approved over 5,000 permits to drill oil and gas wells: that's roughly 100 permits each week. So that's 100 permits that have not been approved since the Republican shutdown started last Tuesday, and the number keeps going up.

The longer this goes on, the more severe the impacts will be. Next week there was supposed to be an oil and gas lease sale in New Mexico—but that has now been canceled. Two weeks from now there's one covering Montana, North Dakota, and South Dakota, and that one is in doubt as well. And it's a domino effect, with the shutdown keeping the government from preparing for future lease sales, resolving protests, and doing the environmental reviews necessary for new wells.

The Republicans like to fantasize that this administration has some on-going war on fossil fuels, despite the increases in production, despite the increases in permits, despite the ongoing lease sales offering millions of acres each year. But their shutdown is making this fantasy a reality, grinding the entire Federal leasing and permitting system to a halt, and they have no one to blame but themselves.

When it comes to the fantasy surrounding this particular hearing, I believe Ranking Member Holt has already pointed out the statistics about how mining jobs are up in this country across the board, for both coal mines and metal mines.

So there's clearly no effort by the EPA, or this administration, to shut down mining in this country. Far from it. But what we have being discussed today is something that I don't think we had nearly enough of in the previous administration: taking a hard look at where mining is occurring, and making sure it's being done the right way.

Bristol Bay deserves a particularly hard look. It is an important economic driver for both the State of Alaska and the entire Pacific Northwest: over 2,000 jobs in the State of Oregon depend on that fishery. Any activity there requires the best available science to assess the risks and evaluate the potential consequences, and I strongly support the EPA's efforts to gather that science on mining in that watershed.

If EPA determines that there is no way to put a mine in this region without unacceptable water quality and fishery impacts, then that is not the right place for a mine. It's simply not worth the risk to the entire Bristol Bay fishing industry, the jobs that depend on it, and the entire way of life of dozens of Native villages.

The EPA is right to be doing their watershed assessment, they're right to be taking a close look at mining impacts, and they're right to be holding miners accountable. I thank the witnesses for being here, and I look forward to their testimony. I yield back the balance of my time.

Mr. LAMBORN. Thank you. I would like to remind the gentleman that this committee does have oversight over mining. I will get you the language.

We will now hear from our witnesses. I want to thank each of you for being here and appreciate the long distance that you have come, in some cases. Your written testimony will appear in full in the hearing record, so I ask that you keep your oral statements to 5 minutes.

Our microphones are not automatic, so you have to turn them on when you are ready to begin.

I will also explain how our timing lights work. When you begin to speak, our clerk will start the time and a green light comes on. After 4 minutes, a yellow light. After 5 minutes, the red light, and I would ask that you conclude at that time.

So, I would like to now welcome to the table our four witnesses: Mr. Edmund Fogels, Deputy Commissioner, the Alaska Department of Natural Resources, the State of Alaska Representative to the Interstate Mining Compact Commission; Mr. Sheldon Maier—I hope I pronounced that correctly.

Mr. MAIER. Maier.

Mr. LAMBORN. Maier. Thank you for the correction, President of the Fortymile Mining District; Mr. Chris Hamilton, Senior Vice President of the West Virginia Coal Association; and Mr. Norman Van Vactor, Chief Executive Officer of the Bristol Bay Economic Development Corporation.

Mr. Fogels, you may begin.

**STATEMENT OF EDMUND FOGELS, DEPUTY COMMISSIONER,
ALASKA DEPARTMENT OF NATURAL RESOURCES, STATE OF
ALASKA REPRESENTATIVE, INTERSTATE MINING COMPACT
COMMISSION**

Mr. FOGELS. Thank you, Mr. Chairman. I am Edmund J. Fogels, Deputy Commissioner of the Alaska Department of Natural Resources. I am here to testify on behalf of the State of Alaska and the 26 member States of the Interstate Mining Compact Commission. I thank you for the opportunity to bring to your attention some of the challenges that recent overreaching actions by the U.S. Environmental Protection Agency have created for mining States throughout the country.

The institutional attitude of the Environmental Protection Agency demonstrated in the examples I will provide today needs to refocus on a more collaborative and respectful relationship with the States. We are hopeful that, through a careful oversight of you and your colleagues, this change will occur, and mining in the United States will continue to provide good jobs to our citizens, and valuable commodities to our industries in a manner that is consistent with the mission of EPA and, more importantly, the interest of our States in protecting human health and the environment.

My primary message today is that State governments have developed effective and robust regulatory programs that should be relied on by Federal agencies, not overridden by them. When Federal agencies such as EPA seek to expand their mining regulation, they are often duplicating existing well-functioning programs.

There are three concrete examples of EPA overreach that I will share with you today.

First, the EPA has been developing a watershed assessment of our Bristol Bay watershed, an area roughly the size of West Virginia. This assessment is in reaction to the proposed Pebble Mine. The issue for Alaska here is not the Pebble Mine, but the potential effective loss of all beneficial use of this massive area of State land, which was promised to the State as part of the Statehood Act, to help secure an independent economic existence for Alaska. This is a serious concern, as the area of the watershed assessment represents almost 10 percent of the State of Alaska's land holdings.

This study could lead to the preemption of what really should happen here, a thorough environmental analysis of the project, once it is actually proposed, through the National Environmental Policy Act, whereby one of the Nation's largest EISs would undoubtedly be produced.

And this study is flawed. It has no legal basis. It is based entirely on hypothetical mining activity, compounded by theoretical projects that may never develop. It ignores modern best practices, mitigation measures, and permit stipulations that would be required. The bottom line: no project would ever get permitted if it could not meet the requirements in multiple State and Federal permits.

My second example is the EPA's attempt to displace successful State bonding programs for the hardrock mining sector pursuant to the Comprehensive Environmental Response Compensation and Liability Act, or CERCLA. Bonds are required to ensure that States can reclaim and remediate mines if a miner is unable to do so. And they are the financial cornerstone of environmental protection. The bond calculations are tremendously complex, and are the culmination of years of permitting efforts. The States have developed vast experience in administering these bonds, and EPA has stated that they will not grow their agency to duplicate this expertise.

We understand that there may be legal sideboards within CERCLA. But States need to be a partner in resolving this. Above all, we should not gut effective State programs. Any rulemaking should be thoroughly vetted with State experts before release.

Third is the increasing frequency of elevations requested by EPA when it does not agree with a 404 permitting decision, a decision that typically has been carefully and cooperatively made with other Federal and State agencies. Using the section 404(q) of the Clean Water Act, and usually when EPA determines that a subject water body is an aquatic resource of national importance, EPA will elevate the decision to higher-level staff, causing significant delays. As there is no definite standard as to what might be an aquatic resource of national importance, it is very difficult for major projects to develop timelines that can predict how EPA's review will affect the project.

It bears repeating that the primary theme of my testimony is that in all of these examples, the process would have gone much more smoothly if the States were consulted and respected as these Federal actions were developed. And we believe that the process would have gone smoother still if Alaska had primacy for its 404

permitting program. In fact, we are currently evaluating if we should pursue such primacy.

Recently the EPA spearheaded an enforcement action against small miners in the Fortymile District of Alaska. My fellow Alaskan, Sheldon Maier, who is a miner in this district, is also going to testify before you today, so I will not delve into this issue. But I would like to say that the Federal agencies should defer to the State agencies to get the problems resolved before sending in the enforcement troops. We know what is happening on the ground, we know the miners, we know their plans of operation.

In closing, I would like to emphasize that Federal regulators must respect the primary role and responsibility of the States in managing, administering, and protecting their lands and waters. This is clearly stated in the Clean Water Act.

Thank you again for the opportunity to testify before you and your leadership. I would be happy to answer questions when the time is right.

[The prepared statement of Mr. Fogels follows:]

PREPARED STATEMENT OF EDMUND J. FOGELS, DEPUTY COMMISSIONER, ALASKA
DEPARTMENT OF NATURAL RESOURCES ON BEHALF OF THE STATE OF ALASKA AND
THE INTERSTATE MINING COMPACT COMMISSION

I. INTRODUCTION

Chairman Lamborn, Ranking Member Holt, and members of the House Subcommittee on Energy and Mineral Resources—I am Edmund J. Fogels, Deputy Commissioner of the Alaska Department of Natural Resources (AK DNR). On behalf of Governor Sean Parnell, the State of Alaska thanks the Subcommittee for this opportunity to testify and express our support for your work to ensure that mining in the United States will continue to create wealth and provide for the Nation's mineral needs in the future without duplicative and overly burdensome Federal regulation. I have also been entrusted by the 26 member and associate-member states of the Interstate Mining Compact Commission (IMCC) to convey their views to the Subcommittee today, and to express their gratitude for your leadership in this area.

In particular, I thank you for the opportunity to bring to your attention some of the challenges that recent overreaching actions by a particular Federal agency—the Environmental Protection Agency (EPA)—have created for mining states throughout the country. The institutional attitude of the EPA demonstrated in the examples I will provide today needs to refocus on a more collaborative and respectful relationship with the states. We are hopeful that, through the careful oversight of you and your colleagues, this change will occur and mining in the United States will continue to provide good jobs to our citizens and valuable commodities and raw materials to our industries in a manner that is consistent with the mission of the EPA, and, more importantly, the interests of our states in protecting human health and the environment.

Biographical Information

Before getting into substantive matters, I would like to briefly mention my professional background as it pertains to this testimony and provide some information about the IMCC. I have been serving as Deputy Commissioner of AK DNR, a state agency of over 1,100 personnel, since December 2010. I have worked as a natural resource manager for the State of Alaska for over 25 years, including as a mining regulator and state/Federal mining permit coordinator. AK DNR is the largest non-Federal land manager in the United States. In addition to Alaska's vast mineral resources, we manage one of the largest portfolios of oil, gas, water, timber, and renewable energy resources in the world. Our workforce is staffed by experts on responsible exploration and development that have years of experience with Alaska's unique environment.

The IMCC, of which the State of Alaska became a full member this year, is a multi-state organization that represents the natural resource and related environmental protection interests of its member states. Twenty-one states have ratified their membership in the IMCC through acts of their respective state legislatures, and five others participate as associate members while they pursue enactment of

state legislation ratifying their membership. A primary focus of the IMCC is liaising with Congress and the Federal government to promote a cooperative effort between state and Federal agencies in advancing responsible mining development and environmental protection.

Overview of Today's Testimony

My primary message today is that state governments must be allowed to be an equal partner, and at times to take the lead, in regulating mining in their respective states. A healthy mining industry and environmentally sound natural resource development are important to Alaska and the member states of the IMCC, and are in the best interests of the United States. Responsibly developing our mineral resources benefits our citizens and the country as a whole. To make this happen, we need cooperation rather than frustration from Federal agencies such as the EPA. The states have developed effective and robust regulatory programs that should be relied on by Federal agencies, not overridden by them.

States have been a central part of bringing about the modern era of mining regulation and environmental protection, and these processes have been very effective at correcting past mistakes. When Federal agencies, such as the EPA, seek to expand their mining regulation they are often duplicating existing, well-functioning programs. This duplication is not only inefficient, but it has real costs to the states and their residents who work to responsibly develop and protect natural resources. The states' familiarity with the specifics of their respective local mining industries is irreplaceable, and Federal agencies must recognize the states' role in representing their citizens' economic and environmental interests.

The examples of ongoing processes that are negatively affecting the State of Alaska and the IMCC member states that I will describe today illustrate how Federal overreach can create uncertainty, increase cost, and cause delay for mining investment. These are also all examples where well-functioning state processes have been duplicated or disregarded. To solve this problem, Federal regulators must:

First, respect the primary role and responsibility of the states in managing, administering, and protecting their lands and waters. This role is grounded in the states' position as sovereign entities in the system of federalism recognized in the U.S. Constitution, and has been unequivocally acknowledged many times by Congress. For example, the Clean Water Act—one of the primary Federal environmental statutes the EPA is tasked with administering—clearly states: "It is the policy of Congress to recognize, preserve, and protect the primary responsibilities and rights of the states to prevent, reduce, and eliminate pollution, to plan the development and use (including restoration, preservation, and enhancement) of land and water resources, and to consult with the Administrator in the exercise of his authority under this chapter."¹

Second, respect the experience and expertise of state agencies who are often much more familiar than Federal regulators with the particular circumstances and needs in their communities. States may be able to craft more practical solutions to challenges if their roles are not displaced by rigid Federal processes that do not take into account state experience and expertise. In short, states are more likely to be problem solvers, looking for and finding solutions that work well for their environment and their economy.

Last, defer to, and build on, the successful programs that are already in place. New programs do not need to be built from the ground up at the Federal level, as this will duplicate many of the well-functioning processes that are established and well-managed by the states. This will ensure that the expertise of both the states and of other Federal agencies can be used efficiently. Collaboration with and support for state programs should be the focus of new Federal initiatives.

II. MINING, UNDER MODERN STANDARDS AND REGULATIONS, IS CRITICAL TO OUR STATES

I know that the Subcommittee is very familiar with the numerous benefits that are associated with U.S. mining, so I will only quickly outline them to give a foundation to the issues of state primacy that my testimony focuses on. Bottom line—mining is critical to the economic, social, and security interests of our states and the Nation as a whole. When companies, including the many small businesses that participate in American mining, invest in mineral exploration and development in the United States it brings high-paying, technical jobs back to our country. Many times, especially in a state like Alaska, these investments and developments occur in rural areas and bring economic opportunities and social benefits to our citizens that are otherwise not widely available. Domestic mining also brings secure domes-

¹ 33 U.S.C. § 1251(b) (emphasis added).

tic supplies of important resources—for example: coal and uranium for energy security, iron for industrial production, and gold and other metals for modern high-tech applications. We are in a global competition for these resources—for secure supplies to meet our demands, and for the investment that drives employment and development in our states.

III. MINING REGULATION IS LOCAL, AND SHOULD REMAIN PRIMARILY THE RESPONSIBILITY OF THE STATES

The issues we are discussing today are certainly global and national, but they are also local. Environmental protection benefits those who live in the protected environment. Clear and general standards, enforced by objective regulators, have to be applied to specific situations in specific locations. This is why the State of Alaska focuses so intently on maintaining high standards for environmental protection—so many of our citizens, whom our state government has a Constitutional responsibility to represent, regularly utilize Alaska's environment. Many areas of Alaskan life, from traditional subsistence lifestyles to local recreation to our robust tourism industry, are dependent on protecting our fish, wildlife, water, and land from degradation.

This is also why Alaska, and the members of the IMCC, recognize that a well-regulated mining industry brings real, local benefits to our residents. The most frequently cited and clearly illustrative example in Alaska is the Red Dog Mine in the Northwest Arctic Borough. This project brings hundreds of jobs to this remote region, and provides the Borough's only source of tax income. In partnership with the regional Alaska Native Corporation (NANA, Inc.), this mine has generated hundreds of millions of dollars of economic activity in the region and is far and away the region's largest employer. When these kinds of mining projects are delayed or deferred due to Federal overreach and permitting delays, it means that local residents do not have access to employment opportunities, and social programs in rural areas have limited funding. As commodity markets are dynamic, delayed projects may miss windows of opportunity. This stretches a 1 or 2 year permitting delay into potentially decades before communities see projects move forward. When projects are abandoned altogether, it means economic and social opportunities they could have provided in our states are completely lost.

Local affects, both positive and negative, are central reasons why mining regulation must preserve a strong role for the states. Federal resources and expertise should not be disregarded, but these complex regulatory activities must primarily rest with state regulators who are on the ground and who understand the full range of their respective states' interests. We need to reverse the tendency seen in the last several years to centralize agency decisionmaking in Washington, DC. In this regard, I would like to submit for the record a resolution concerning the states' federalism concerns that was recently adopted by IMCC which further expands on our concerns and recommendations regarding state and Federal relations. (Material submitted has been retained in Committee's official files.)

IV. CURRENT STATE MINING REGULATIONS AND PROGRAMS ARE EFFECTIVE AND FUNCTIONING WELL

Mining can have impacts on the environment. Many of the laws that regulate mining today were passed to remedy the negative impacts that prior, unregulated mining had during the 1800s and early 1900s. State regulators can confidently say we have learned many lessons from these earlier projects. The same re-prioritization of environmental protection that motivated the passage of Federal laws such as the Clean Water Act (CWA) and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) in the 1970s and 1980s has also occurred in state government. Modern regulations and mining practices, with states functioning as the leading regulator in many areas, now successfully mitigate impacts associated with mining.

This point is critical for our discussion today—there are not lapses or loopholes in today's environmental regulations. There is not a need for Federal regulators to displace existing state programs. Recent EPA initiatives to ratchet up their regulations are a solution without a problem. They usurp authority from the states, and, in some cases, from their own partners in other Federal regulatory agencies, while resulting in less-effective regulation.

V. EPA OVERREACH CREATES UNCERTAINTY, INCREASES COSTS, AND CAUSES DELAY FOR PROJECTS

There are three concrete examples of EPA overreach that I will share with you today, but this list is certainly not exhaustive. The administrative process within

which these dialogs occur can be extremely detailed and technical, and this opacity works against effective oversight and readjustment of agency priorities. It bears repeating that the primary theme of my testimony is that all of these processes would have gone much more smoothly if the states were consulted and respected as these Federal actions were developed. We are hopeful that Congress will support the states in the future by reaffirming the call for state primacy supported by the U.S. Constitution and described in Federal law in your continued oversight.

The Bristol Bay Watershed Assessment—Uncertainty

Since 2010 the EPA has been developing a “watershed assessment” of an area roughly the size of West Virginia in the Southwest of Alaska.² After the short description of this rushed process that I will provide, it will be unquestionably clear that it has really accomplished only one thing—increased uncertainty in the regulatory framework for mining in the Bristol Bay region.

Despite there being no clear basis in statute, regulation, or past practice for this kind of study,³ this new watershed assessment process has developed an unauthorized regulatory document, based on hypothetical mining activity in the region, to potentially support the unprecedented exercise of a preemptive CWA 404(c) veto by EPA. To be clear—the State of Alaska is not concerned that an attempt is being made to gather information in the region related to mining, or to ensure that the numerous valuable ecological resources in the sensitive Bristol Bay region are protected. With the watershed assessment, a Federal agency is creating new, ambiguous regulatory steps that exclude the state and duplicate the processes already put in place by existing state and Federal law. The state’s biggest issue is not Pebble Mine—but the potential effective loss of all beneficial use of this massive area of state land, which was promised to the state as part of the Statehood Act land entitlement to help secure an independent economic existence for Alaska and Alaskans. This is a serious concern, as the area of the watershed assessment represents almost 10 percent of the State of Alaska’s land holdings.

Were a mining permit submitted for a project in the region, a duly authorized Federal regulatory document that is consistent with established law and the public participation process would have to be prepared. This would not be a watershed assessment but instead an Environmental Impact Statement (EIS) under the National Environmental Policy Act (NEPA). The latter process would also allow for the State of Alaska to participate as a cooperating agency, and have a formal role representing its interests in the process. An EIS must still be completed for any future development in the region, but it will likely be pre-determined by the amorphous regulatory activity undertaken by the EPA in conducting the watershed assessment outside of the normal NEPA process.

The EPA’s multi-year, multi-million dollar assessment is also based entirely on hypothetical mining activity.⁴ Under the typical regulatory process, which will still have to occur for any future mining development in the Bristol Bay region regardless of EPA’s actions stemming from the watershed assessment, a project proponent would be responsible for submitting a detailed mine plan to state and Federal regulators to review. If this mine plan did not comply with state mitigation and environmental protection laws, or did not receive appropriate Federal permits under the CWA, it would not be able to go forward. All of these decisions would be made based on specific proposals, rather than speculation and conjecture.

Finally, a watershed assessment is not the manner in which the EPA is statutorily authorized to involve itself in a regulatory approval process under the CWA. While the EPA has not committed to do so, the State of Alaska has repeatedly raised the concern that EPA will use the assessment to claim it has authority to preemptively veto CWA section 404 permits before they are issued or even applied for.⁵ The EPA does have the authority to veto CWA section 404 permits—if they

² Almost all of the lands in the assessment area are owned by the State of Alaska. Conversely, almost none of the lands are owned by the Federal government.

³ The watershed assessment has been conducted at a cost of over \$2 million dollars. In the context of sequestration and serious Federal budget challenges, these are funds that the EPA has expended on a purely discretionary activity while letting mandatory responsibilities (i.e., approving state-proposed water quality standards) slide.

⁴ The activity EPA evaluated in the watershed assessment was based in part on a non-technical investor document prepared in 2011 by an entity with a partial interest in the project to comply with Canadian financial disclosure requirements.

⁵ Despite the fact that the watershed assessment was begun in response to a petition for a preemptive CWA 404(c) veto by private groups, the EPA has stated it “will not address use of its regulatory authority until the assessment becomes final.” However, EPA has acknowledged the watershed assessment will “provide an important base of information” for EPA to respond to the petition.

are deemed to be insufficient after full review of the mining plan has taken place. The preemptive veto that the EPA has been urged to make would turn this process on its head and replace the statutory process called for under NEPA and the CWA with a process created on an ad-hoc basis by EPA outside of the Administrative Procedure Act (APA).

The state has submitted many detailed comments and criticisms of the watershed assessment to the EPA, and my comments today are only a summary of these concerns. On this point, the take-away is that the EPA has obfuscated and duplicated the EIS/NEPA/CWA section 404 process in conducting its assessment—without involving the specifics of an actual project or the application of the state's processes. Ad-hoc regulatory steps that diminish the state's role are the opposite of how Federal agencies should be conducting their work.

CERCLA 108(b) Bonding—Costs

The EPA's attempts to displace successful state bonding programs for the hard-rock mining sector pursuant to its authorities under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) is another major concern to Alaska and the members of the IMCC. Despite the extensive expertise that state agencies have developed in the areas of bonding and reclamation, it is unclear how an EPA-administered hard-rock bonding program would incorporate this expertise or how it could affect these successful state programs.⁶ This is an example of the need for Federal agencies to respect and proactively consult with states on regulatory issues, rather than making us fight to provide information about the success of the programs we already have in place.

This process could have enormous negative impacts on the mining investment in the United States and our national interests by driving up capital costs. Reclamation bonds are capital commitments that companies must make to ensure cleanup and reclamation of mining activities are completed if the companies themselves go bankrupt or are unable to remediate their sites. Bonds are the financial cornerstone of environmental protection and are a cost that responsible operators must pay to receive mining permits. However, unsophisticated calculations by the EPA, uninformed by the vast experience of the states, would throw the bonding process severely out of balance. Excessive bonds do not make it more likely that a mine will be properly remediated, but they may prevent it from being developed entirely.

The EPA's initiative to develop bonding requirements for hard-rock mines under CERCLA 108(b) dates back to 2009. In response to a suit brought by environmental non-governmental organizations (NGOs), a Federal district court in California found that the EPA had not complied with timelines in CERCLA to begin issuing bonding requirements for industrial activities that create a high risk of releasing hazardous materials into the environment, and ordered the EPA to begin doing so. In July 2009 EPA announced in the Federal Register that it would begin with hard-rock mining. This was in some ways a surprising decision, because EPA did not have any institutional expertise in bonding hard-rock mines. Successful state and Federal programs were already in place, and modern mitigation measures and reclamation have significantly decreased the risk of hazardous material releases associated with hard-rock mining.

Many states raised questions and concerns about how the rulemaking was proceeding in 2010 and 2011. In this regard, I would like to submit for the record copies of resolutions recently adopted by IMCC and the Western Governors Association that address this matter in greater detail. (Material submitted has been retained in Committee's official files.) The State of Alaska understands that this rulemaking has been delayed by EPA's focus on its numerous other expansive regulatory undertakings, but may be reinitiated this year or next. If this rulemaking goes forward, the EPA should commit to deferring to state bonding programs and honoring their primary role of managing mining programs within their respective jurisdictions. Importantly, any rulemaking should be thoroughly vetted with state experts before its release so that EPA can benefit from their expertise regarding the content and implementation of the rule.

Aquatic Resources of National Importance (ARNIs)—Delay

The final subject I will touch on today is the role the EPA has played in reviewing the work of other Federal permitting agencies, and delaying decisions that have been carefully and cooperatively made. Under section 404(q) of the CWA, EPA is directed to enter into a memorandum of agreement with the Army Corps of Engi-

⁶As well as the successful bonding programs conducted by the Bureau of Land Management (BLM) in the Department of the Interior (DOI) and the United States Forest Service (USFS) in the Department of Agriculture (DOA).

neers (Corps) to implement their shared responsibilities under CWA section 404. This memorandum lays out a process for escalating levels of review at both the EPA and the Corps when EPA believes a permit improperly addresses environmental concerns.⁷

Recently the EPA has been quick to escalate review of projects under the MOU. EPA documents indicate that in the first 20 years of the MOU, less than 20 permit cases were elevated in the entire country.⁸ One of these was an oil development project on the North Slope of Alaska in 2005. In the last 3 years two 404(q) letters have been sent in Alaska alone: in 2010 for a bridge built over the Tanana River by the Alaska Railroad, and just last month for a road being developed for a road near the native village of Nuiqsut on the North Slope.

The process in the MOU was ostensibly created to streamline the joint EPA and Corps review timeline for CWA permits, but in practice EPA ARNI concerns have been raised once details of the project have been extensively debated between the Corps, state regulators, and the project proponent. As there is no definite standard as to what might be an ARNI, it is very difficult for major projects to develop timelines that can predict how EPA's review will affect the project. Project proponents are pressured to accept changes sought by the EPA to preliminary Corps decisions in order to avoid the potential extended delay that a disagreement between the Federal agencies could entail.

VI. EPA'S ENFORCEMENT APPROACHES REINFORCE THE NEED FOR STATE PRIMACY IN MINING REGULATION

My fellow Alaskan Sheldon Maier from the 40-mile district in Alaska where the "Chicken Raid," as it is being called, took place is also going to be testifying before you today, so I will only speak briefly about this incident and leave the details to him to describe. However, I will note that it demonstrates the over-zealousness that the EPA and other Federal agencies are applying to the enforcement of their environmental regulations. This kind of enforcement raises serious issues for all Alaskans who exercise their rights to use the state and federally managed lands and waters in Alaska, and especially for many of our miners. It also highlights the importance of having state regulators who know the details of operations as the primary lead on the programs that have such direct impacts on the state's citizens.

VII. FUTURE EPA OVERREACH SHOULD BE AVERTED BY STATE CONSULTATION ON CWA JURISDICTION TODAY

The EPA has recently released a draft document prepared for its Science Advisory Board (SAB) that has been informally titled the "connectivity study."⁹ This is a several hundred page report that documents the interconnection of most water in the entire United States, and will serve as the basis for an expansive EPA rulemaking that will likely dramatically increase CWA jurisdiction. The EPA has acknowledged as much, noting on its website that this report "will provide the scientific basis needed to clarify CWA jurisdiction"¹⁰ and listing the areas that the future rulemaking will generously exempt, such as "artificial ornamental waters" and "artificially irrigated areas that would be dry if irrigation stops."

The scope of CWA jurisdiction is absolutely critical to the management of land and water in every state throughout the country. It has been disputed for decades, including in multiple cases before the Supreme Court that have restricted EPA's prior interpretations of its authority. It is therefore absolutely critical that the states be extensively consulted during this rulemaking. Unfortunately, that isn't happening.

While the connectivity study is currently out for public comment and is not yet finalized, the EPA has been developing its rulemaking in tandem with the study, which EPA states "provide[s] the scientific basis needed" to justify its development. Troublingly, a draft proposed rule has already been sent to the Office of Manage-

⁷Ironically, this process culminates in a 404(c) veto action—the same veto that the EPA's Bristol Bay watershed assessment is gathering a "base of information" for before any Corps permit application has even been submitted.

⁸EPA 404(q) fact sheet: "EPA has requested higher level of review by the Department of Army on 11 permit cases under the 1992 404(q) MOA as of January 2011 . . . Eight (8) additional permit cases were elevated to EPA Headquarters." See <http://water.epa.gov/type/wetlands/outreach/upload/404q.pdf>.

⁹Formally titled: "Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence (External Review Draft)." See 78 Fed. Reg. 58,536 (Sept. 24, 2013).

¹⁰See EPA Report Information, available at <http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=238345>.

ment and Budget (OMB) in the White House for interagency review. While the State of Alaska and many of the IMCC states have pushed for a formal rulemaking to clarify CWA jurisdiction,¹¹ this undertaking should not be conducted without the detailed involvement of the states. Additionally, it should not be conducted before the states have been able to comment on and review the report providing the underlying scientific basis for the rulemaking.

Unfortunately, the states have been provided the same opportunity to comment on the connectivity study as the average member of the public. This disregards the clear direction of the CWA to consult with, and retain the primary role of, state governments in managing land and water use. For example, the State of Alaska—representing almost 20 percent of the land mass of the United States—is not even featured in the maps in the connectivity study. There are no sections addressing its unique arctic environment or the complexities of permafrost. These kinds of omissions starkly illustrate the need to involve state regulators who know the specifics of their respective regions from the very beginning of these processes.

VIII. THE SOLUTION

The problems I have discussed here today are difficult to solve. They will require a change in approach by Federal regulators to increase rather than decrease consultation with states when dealing with mining regulation. Unfortunately, expressions of Congressional intent language like that in the CWA are not always enough to stem Federal overreach. There must also be continued oversight and leadership from Congress and the executive branch to ensure that states are treated as partners in the critical process of environmental protection. The benefits of such a stronger state and Federal partnership will accrue to the whole Nation. Increased Federal efficiency will reduce both government expense and delays that affect projects. State primacy will ensure that all of the state's interests are represented in regulatory decisionmaking. Environmental protection can continue to be strengthened by Federal and state experts complimenting rather than duplicating each other's work.

The states are ready to take up this partnership. The membership of 26 states in the IMCC demonstrates this commitment, and provides an excellent venue for the further development of state and Federal partnerships in the area of mining regulation. In the future, the country as a whole may want to discuss broader solutions, including review of the CWA, CERCLA, and other environmental laws to ensure that the states' expertise can be more effectively put to work in these areas. For example, the Canadian process of devolving resource management authority to provinces and territories may provide lessons that could be applied to our own system. The IMCC member states are committed to an open dialog about these ideas.

Additionally, the State of Alaska is going a step further and undertaking a review of assuming primacy for permitting under CWA section 404. Under this program, the state, rather than the Corps, would administer many 404 permitting responsibilities in cooperation with EPA. If we moved forward, this could require significant effort and expense by the state, but it may also make permitting projects, including mining projects, in Alaska more efficient, timely, and certain. We are putting our money where our mouth is. We are also potentially alleviating significant financing and staffing burdens for the Federal government at a time of very limited Federal budget capacity. This kind of partnership is a win-win scenario. There are many questions that need to be answered regarding development of the state program before we can make a recommendation to the Governor and the State Legislature to continue the process, but we are committed to continuing our thorough evaluation.

IX. CONCLUSION

I have presented a number of problems caused by overreach by the EPA and other Federal agencies, and I know my fellow panelists will be raising others. I am also presenting a solution—respect for states' rights and state primacy. States need to remain in the driver's seat on mining regulation so we can protect our environment while also attracting the mining investment that protects our citizens' economic security. I respectfully ask that you continue your careful oversight of Federal regulatory agencies to ensure they acknowledge this need. Thank you again for the opportunity to testify before you today, and for your leadership supporting American mining. I would be happy to answer any questions you may have.

¹¹ Rather than the potentially extra-legal attempts EPA initially pursued to make jurisdictional determinations through guidance documents that were not reviewed under the APA.

Mr. LAMBORN. Thank you.
Mr. Maier.

**STATEMENT OF SHELDON MAIER, PRESIDENT, FORTY MILE
MINING DISTRICT**

Mr. MAIER. Thank you. I am Sheldon Maier, President of the Fortymile Mining Association. Fortymile Mining Association was first convened in 1898. We have been organized and operating ever since to try to continue to ensure responsible resource development in our region.

First, I will start by talking about the Federal overreach by the EPA, and about the raids. We consider them raids. It was a serious invasion.

On August 13—I think it was between the weeks of—or in week 22 through 27, the EPA led their environmental crimes task force with armed agents. Between 3 and 7 agents entered 30 different mining locations in the Fortymile. They entered mine sites without identifying themselves. They charged in, at Dick Hammond's family mine, he was at his cabin when they came by. Seven agents rode by on four-wheelers, didn't stop to identify themselves. Went up to his mine site, without him being there, poked around on his equipment, he had to go up and ask them what they were doing. And they said they were there to enforce the 404 Clean Water Act. He said they were extremely nervous, he was extremely nervous, because he had never experienced anything like this before.

The Race family, Chris Race, he was working on a piece of broken equipment, so he wasn't actually mining, or sluicing, what we call at the time, and four Federal agents, or "agents," came by him. They didn't bother to stop and talk to him. They just came up and started poking around his mine site, too. They started looking at all of his equipment, climbing around on his stuff, looking for, well, he had to go ask them what they were doing. The same thing, they didn't bother to identify themselves. This is definitely not professional conduct from a law enforcement agent.

And then Jeff Owen, another miner that I spoke with, he had the seven armed agents come to his mine site. They all had their full flak gear on, said "Federal Agents" on their vests. They were carrying not just sidearms. They told him they were there to collect water samples. When they did collect water samples, the only one he saw them take, which, when you are collecting a water sample, you are supposed to take it out of the main stream that the miner is actually operating on, not a side tributary. The only sample he saw them take was out of a side tributary.

And then, Linda Kile, who is here today, and she has firsthand experience, because she was actually raided. And it would be nice for you to hear her side of the story.

Notwithstanding this unacceptable show of force, I mean we are used to getting inspected by agencies, the State and the Federal agencies, it is unacceptable that this happens. There is no peer-reviewed science studied today to show that has been done currently, that placer mining is doing anything to hurt the water. We all, we have been living this life for a long time. I have been mining for 22 years in the Fortymile. Mrs. Kile has been for 37. We drink the water, we eat the fish. We care deeply for the land. We

don't want to see it ruined. We just want to be able to continue our lifestyle.

But we have multiple agencies, four Federal agencies right now are coming down on us. If we can't do something to stop what is happening with this regulatory overreach, we won't be in business any more. The Bureau of Land Management is one of them; MSHA, the other one; and the Corps of Engineers. And we have, the OSHA, for instance, they offer an exemption for small miners. We don't get one. Or, I mean, for small business owners. MSHA doesn't offer that for small miners.

As far as the water quality standards go, I couldn't get any answers out of the EPA on where the water quality standards came from that we are supposed to be getting out of our settling ponds if we have discharge. But the only answer I got was the EPA said that the DEC set the standard. Well, the DEC said the EPA gave them a directive that they needed to pick one, so they picked drinking water. We are supposed to have drinking water standards of anything that comes out of our pond systems. And it is just not attainable. We can't humanly do that.

And I thank you for allowing me to come here today and testify.
[The prepared statement of Mr. Maier follows:]

PREPARED STATEMENT OF SHELDON MAIER, FORTY MILE MINING ASSOCIATION

THE FORTY MILE MINING ASSOCIATION

Gold discovery in the Fortymile September 7, 1886 by Franklin and Madison on Franklin Gulch. March 25, 1898 first official meeting of the Fortymile Mining Association (FMA) on Bonanza Bar. The Fortymile has been mined and prospected since making it the oldest Mining District in Alaska.

Placer gold is washed from gravel without the addition of chemicals. There are approximately 657 active small scale placer operations in Alaska today; 77 are in the Fortymile mining district.

The FMA maintains annual meetings and fundraising to ensure responsible mining activity in the region.

FEDERAL OVERREACH BY THE ENVIRONMENTAL PROTECTION AGENCY

August 2013; an EPA led crime taskforce with armed fully suited squads of 3-7 men entered 30 mining locations in the Fortymile. The taskforce took water samples from small scale placer operations to ascertain compliance with discharge requirements mostly without the courtesy of introducing themselves to the mine operators.

EPA visit at Jeff Owen's mine site; 7 armed guards in two cars entered camp, 2 approached the miner for introduction, the rest started taking water samples. To measure potential discharge, a "background" water sample from upstream of the operation is needed. At the Owen mine site, the EPA took the background water sample from a small tributary to the mainstream instead.

At the Race family mine, 4 armed guards entered on four-wheelers, they did not introduce themselves to the miner, but simply commenced sampling. The miner approached the agents to inquire about their activities.

At the Hammond family mine, 7 armed agents passed the miner's cabin without stopping or making introduction and commenced searching and sampling at the mine site. Again the miner approached the agents to find out what their purpose was.

Linda Kile will give an account of the inspection at her and her husband's mine site. Here again, no introductions were made, and the miner had to initiate dialog with the agents.

Notwithstanding the unacceptable show of force to collect water samples, there is no science supporting current EPA small mine discharge restrictions. The only peer-reviewed studies on the environmental effect of fluctuating suspended solids, or turbidity, from placer mining, use data from before current settling pond and reclamation requirements were in place.

The Army Corps of Engineer branch is also reaching into Alaskan's mining rights further by planning to ensure wetland reclamation through compensatory mitigation. No study has investigated small scale placer mining impact on wetlands since current reclamation practices have been mandated.

FEDERAL OVERREACH, BUREAU OF LAND MANAGEMENT

In 1980 the Fortymile Management Plan along with plans for other Eastern Interior areas were mandated by Congress, but BLM has continuously ignored mandates in the plans to open designated areas to mineral entry, and the agency refuses to recognize valid existing rights with regards to navigable waterways, right-of-ways, and validity of mining claims in the managed areas.

In accordance with the 1980 mandate, small scale placer miners now fulfill settling pond and reclamation requirements. Otherwise small scale placer mining methods have changed little since 1980 continuing to rely on the physical properties of material and water for gold extraction.

Nevertheless, BLM insists on a new lengthy and more restrictive management plan encompassing all Eastern Interior Alaska.

MINING SAFETY AND HEALTH ADMINISTRATION

MSHA regulations are applicable to small mines to the same extent as to large operations with hundreds of employees, and large mines employ several people to stay abreast of MSHA required record keeping; an onerous and unneeded task for small scale placer operations.

FMA encourage miners in the district to follow MSHA mandated precautions and practice safety and FMA conducts an annual licensed MSHA training class facilitating this.

OSHA partially exempts businesses with fewer than 10 employees; in the interest of attainable safety parameters, a similar MSHA small miner exemption is warranted.

ECONOMIC AND HISTORIC IMPACT

The Alaska small scale placer industry impacts the economy in trade hubs as well as in the rural communities where the mines operate and contribute, and small scale place miners in Alaska work hard to comply with regulations to stay safe, minimize impact, and protect the environment.

At the same time miners in the Fortymile are contributing to and participating in an ongoing part of Alaska mining history. Taking steps to ensure the survival of this sustainable and historically well preserved way of life is paramount.

SECURING AMERICAN SMALL SCALE MINING JOBS

In cooperation with the Alaska Miners Association the FMA has worked continuously to seek acceptable solutions and we suggest:

- Small miner exemption from most EPA, COE, and MSHA regulations; for mines under 10 employees and 20 acres
- Congressional mandate to implement the original Fortymile management plan

References:

- Alaska Polar Regions Archives, Rasmusen Library, UAF
- Alaska Department of Natural Resources
- EPA and MSHA regulations
- http://scholar.google.com/scholar?hl=en&as_sdt=0,2&q=turbidity+mining+alaska
- Army Corps of Engineers
- Proposed Eastern Interior Management Plan, and communications with BLM state director Cribley Oct 2012
- Fortymile Management Plan
- https://www.osha.gov/pls/oshaweb/owadis.show_document?p_table=STANDARDS&p_id=9632
- Fairbanks Economic Development Cooperation
- Personal communication

Mr. LAMBORN. Thank you.
Mr. Hamilton.

**STATEMENT OF CHRIS HAMILTON, SENIOR VICE PRESIDENT,
WEST VIRGINIA COAL ASSOCIATION**

Mr. HAMILTON. Thank you, Mr. Chairman. Good afternoon. I am Chris Hamilton, Senior Vice President of the West Virginia Coal Association. I appreciate the opportunity to participate in today's hearing.

Our State of West Virginia just celebrated its 150th birthday, and we have been mining for all of those 150 years. As a State, we manufacture and export energy and power throughout the eastern part of our country, throughout the world. It enables millions of Americans to enjoy the freedoms and liberties, and the world's greatest quality of life, which we do.

West Virginia is the second leading coal-producing State, the country's leading underground coal-producing State, and a U.S. leader in coal exports, where we account for about 50 percent of the U.S. total. We have consistently averaged between 150 and 160 million tons of annual coal production over the past several decades, until this administration took office. We ship coal to practically every State east of the Mississippi River and some 38, 39 foreign destinations.

Coal mining is a \$30 billion business, an industry in West Virginia with coal and electric utilities accounting for over 60 percent of all business taxes. Over the years we have enjoyed a great workforce, great access to ports, and tremendous quality in our coals. We also have a great infrastructure to support that level of mining. We have the best miners found anywhere in the world.

Our industry was rolling along just fine, expertly navigating the typical cyclic nature of our business with economic fluctuations and mild weather patterns affecting demand and market conditions. In January 2009, all that changed when we began to experience an all-out assault on our industry from the Obama administration and our Federal Government. Literally, the day after President Obama took office, mining companies in West Virginia began to receive objection letter after objection letter from the U.S. Environmental Protection Agency raising objections to new permits. And even those that were already issued, where active operations exist. These were permits that were previously cleared by the same Federal agency, the U.S. Corps of Engineers, along with the West Virginia Department of Environmental Protection.

Then came the Administration's Council on Environmental Quality and its multi-agency mine permit review process, known as the enhanced coordinated permit review process, and the imposition of new permit demands. This effectively slowed the mine permit process to a crawl, which soon afterwards became known as the Administration's "Permitorium."

The Administration's war on coal has been waged with a barrage of ill-conceived administrative and regulatory actions, such as EPA's Spruce Mine retroactive veto, the Office of Surface Mining Reclamation's totally unnecessary efforts to rewrite the Stream Buffer Zone, effectively paralyzing acres and acres and millions of tons of coal reserves in our State. And, of course, EPA's regulatory train wreck. The war on coal is not rhetoric, it is real, and it is wrecking havoc and bringing harm to practically everyone in our State.

Today, 57 months into the Obama administration, the war on coal has taken its toll, and things are very bleak in West Virginia. Currently, we have 101 fewer mines operating today than this time in 2008. That means approximately one-third of our coal mines operating in 2008 are now closed. All mining operations are impacted. Surface and underground, every mine has slowed or has cut back.

In West Virginia alone, there are over 3,500 miners laid off or furloughed, another 12,000 to 15,000 mining-dependent jobs, which have been lost over the last 3 years. Across the Appalachian region, the damage is even worse, with approximately 10,000 direct mining jobs lost and another 40,000 indirect jobs lost. At an average salary of \$75,000 per person, the net effect is the removal of over \$700 million from West Virginia's economy, and a whopping \$2-plus billion loss from within a tri-state region, of Southwest Virginia, West Virginia, and Eastern Kentucky. These are real dollars that have been lost, impacting every family, every business in our area.

The hardships on West Virginia and West Virginian families is hard to imagine from Capitol Hill: high stress levels, not being able to make ends meet, basic life needs not being met. These are too commonplace now, leaving a large number of West Virginians without hope and vulnerable to the perils of today's society as hopes of gainful employment vanish, and the possibility of life without a paycheck and health care benefits preconditions all else.

As mining jobs have stripped away, we have seen a significant rise in drug and alcohol abuse, theft, and other forms of crime, and a tremendous amount of social decay.

Thank you again, Mr. Chairman, for allowing us to participate, to share these numbers, to share these economic facts with you, as a direct result of this administration's war on coal. Thank you.

[The prepared statement of Mr. Hamilton follows:]

PREPARED STATEMENT OF CHRIS R. HAMILTON, SENIOR VICE PRESIDENT, WEST VIRGINIA COAL ASSOCIATION AND CHAIRMAN, WEST VIRGINIA BUSINESS AND INDUSTRY COUNCIL

Good afternoon! I appreciate the opportunity to participate in your meeting and discuss the actions or inactions of this Administration on West Virginia's economy.

I'm Chris Hamilton, Senior Vice-President of the West Virginia Coal Association. More information on my background and experience in coal is included in my prepared remarks before you.

West Virginia just celebrated its 150th birthday and we've been mining for all of those 150 years. We are without question one of the state's leading industries, if not the leading industry. We have always provided good paying jobs, infused millions of dollars into local and statewide economies and have provided the region, state, country and world with low-cost, reliable power on a 24/7 basis.

That's what we do, as a state we manufacture and export energy and power throughout the eastern part of our country and throughout the world and it enables everyone else to enjoy the freedoms and liberties along with the world's greatest quality of life.

West Virginia is the second leading coal producing state, the country's leading underground coal producing state and the U.S. leader in coal exports, accounting for 50 percent of the U.S. total. We have consistently averaged between 150–160 million tons of annual coal production over the past several decades—this is until this administration took office.

We ship coal to practically every state east of the Mississippi river and some 38–39 foreign destinations.

Coal mining is a \$30 billion industry in West Virginia with coal and electric utilities accounting for over 60 percent of all business taxes. Over the years, we've enjoyed a great workforce, great access and coal quality, close proximity to ports, and generally, a good infrastructure. We have the best miners and coal quality found anywhere in the world.

Our industry was rolling along just fine, experiencing the typical cyclic nature of our business with economic woes and mild weather patterns affecting demand and market conditions. In January 2009, all that changed when we began to experience an all-out assault on our industry from the Obama Administration and our Federal Government.

Literally, the day after President Obama took office, mining companies in West Virginia began to receive objection letter after objection letter from USEPA, raising objections to new permits and even already-active operations that were previously approved and cleared by EPA, the U.S. Army Corps of Engineers and WVDEP.

Then came the Administration's CEQ and its multi-agency mine permit review process known as the (enhanced coordinated permit review process) and imposition of new permit demands effectively slowing the mine permit process to a crawl, which soon afterward became known as the Administration's "perditorium"—the highjacking of state's rights over the administration of water quality standards.

A barrage of ill-conceived administrative actions, litigation and regulatory actions—e.g. Spruce mine veto, stream buffer zone proposal from EPA and its sister agencies OSM and MSHA, coupled with EPA's "train wreck" advanced the "War on Coal".

Fast forward to today, 57 months later, the war on coal has taken its toll and things are very bleak (statewide austerity). Currently, West Virginia has (101) fewer mines operating today than this time in 2008—approximately one-third of our coal mines operating in 2008 are now closed. All mining operations are impacted and every mine has been slowed or has cut back.

In West Virginia alone, there are over 3,500 miners laid off or furloughed and another 12–15,000 mining dependent jobs have been lost. Across the Appalachian region, the damage is even worse, with approximately 10,000 direct mining jobs lost and another 40,000 indirect jobs. At \$75,000 per person, the net effect is the removal of \$719 million from our state's economy and a \$2.05 billion loss from our region. These are real dollars that have been lost, impacting every family and business in our area.

The hardship on individuals and West Virginia families is hard to imagine. High stress, not being able to make ends meet, basic life needs not being met, are all too commonplace leaving a large number of West Virginians without hope and vulnerable to the perils of today as hopes of gainful employment vanish and life without a paycheck preconditions all else. As mining jobs have been stripped away, we have seen a significant rise in drug and alcohol abuse, theft and other forms of crime and social decay.

Small communities throughout our state have been threatened and county and municipal budgets and resulting government services dwindle.

Since 2008, West Virginia has lost 25 percent of production as coal prices and productivity continues to fall. West Virginia has lost millions of dollars in severance collections which serves to fund education, county budgets and important programs for seniors and the less fortunate.

To make matters worse nearly 300 coal-fired power units nationwide have closed or will be retired this year. Other plants have switched to natural gas. A total of eighteen (18) coal-fired units in West Virginia have announced their plans to close.

It is estimated that each unit accounts for approximately 100 full-time positions, thus the total number of jobs impacted in West Virginia by these closures is approximately 1,800 additional jobs.

By utilizing every resource available to him, every Federal agency, President Obama has done everything in his power to obstruct West Virginia coal production and our industry from maintaining its viability in domestic and world markets. To date, and by all the negative administrative and policy acts, his mantra has been akin to "death by 1,000 cuts". The President's plan on climate and EPA's NSPS is a knock-out punch for our industry.

Our only savior at the moment appears to be the export market. As domestic usage continues to trend downward, international demand grows exponentially. With West Virginia currently accounting for a large share of U.S. exports, we stand to gain and become a world marketer of coal.

Fortunately for us, world coal usage is on the rise as developing countries expand their economies and infrastructure. Exports have doubled over the past five (5) years and coal is quickly becoming the world's fuel of choice for power generation. In fact, coal is scheduled to surpass oil over the next 2–3 years.

Other nations see coal the way America used to view this resource, as an abundant, low-cost and reliable fuel. America became a manufacturing superpower thanks to coal, and it can't be a coincidence that our global domination waned when we stopped fostering coal industry development.

Although the current export market appears strong today, predictions of our continued presence and strength vary. As with domestic energy, we face strong competition for seaborne coal from foreign producers who do not have the same level of protections for the environment or for human rights.

Actions of this president have even placed global opportunities at risk by calling on the World Bank and international financial institutions to stop funding the construction of coal-fired power plants and the construction of new port facilities which could handle greater coal volumes, are endangered by the EPA.

In closing, I simply observe—the president speaks a lot about economic justice and hope and promise—I would simply ask: where is the justice for West Virginia and Appalachia? Where is the hope or justice for our coal mining families?

There are few options available for many of our miners and by his actions, this president is effectively condemning them to lives of poverty and despair. Again, I ask where is the justice?

Thank You.

Mr. LAMBORN. Thank you.
Mr. Van Vactor.

STATEMENT OF NORMAN VAN VACTOR, CHIEF EXECUTIVE OFFICER, BRISTOL BAY ECONOMIC DEVELOPMENT CORPORATION

Mr. VAN VACTOR. Mr. Chair, members of the committee, our own Congressman, Don Young, my name is Norman Van Vactor, and I am the CEO/President of the Bristol Bay Economic Development Corporation.

BBEDC is a community-based corporation charged with developing and enhancing the fishery-related economic opportunities in our region. For nearly 40 years, I have worked in every aspect of the seafood processing industry in Bristol Bay, working my way from deckhand on a boat to the Bristol Bay manager for one of the largest seafood companies in the United States. I am particularly honored to be here today with Mr. Tom Tilden, Rick DelKittie, and Bobby Andrew, who are tribal leaders from our region.

I have to confess, given my track record of aggressive economic pursuit and development, I never thought I would be in Washington, DC to testify in support of a regulatory agency. But EPA's involvement in Bristol Bay offers the opportunity for a science-based, common-sense solution to the threat posed by the proposed Pebble Mine. So, here I am, and I thank you for the opportunity.

Also, since I am here, I cannot help but comment on the fact that the government shutdown is already impacting our fishing economy. The Bristol Bay Red King Crab fishery must start on October 15, or it risks losing a significant marketplace. Please end the shutdown so our fishermen can get their Federal permits and get back to work.

My testimony today focuses on the importance of the Bristol Bay economic engine, based on our wild salmon fishery, and the positive role EPA has played, and should continue to play, in assisting the people of Bristol Bay to protect this immensely important cultural and economic resource.

The indigenous people and folks like myself who call Bristol Bay home have one commonality: our lives and economy focus around salmon. The Bristol Bay salmon fishery, as has been mentioned, is, without question, large and lucrative, and provides about 50 percent of the world's sockeye salmon production. The economic impor-

tance of the fishery extends well beyond Bristol Bay in the State of Alaska. We touch the Pacific Northwest in a big way and, by extension, our entire country: over 12,000 jobs, over 2,000 small business owners that we call fishing families. Our fishery is robust and healthy because of the pristine and untouched watershed conditions.

In February of 2011, the communities of Bristol Bay drafted what we now call the Bristol Bay Vision Statement. That vision is based on the fact that we are a salmon-based community and economy, and is founded on a fish-first policy.

The perspective shared by most of my industry, the production level with boots on the tundra and the boats of Bristol Bay, is, despite being at odds at times with regulators, EPA has been effective and fair in permitting and enforcement. Consistent enforcement rewards those of us in compliance, and provides a clear message to the regulated community that there is a price to be paid for non-compliance.

The proposed Pebble Mine sits at the headwaters of the Kvichak and the Nushagak River drainages, two of the most prolific salmon-producing watersheds in the world. This sensitive location, its massive size, and potential acid-generating nature, combine to pose an unacceptable risk to our region.

I want to highlight that EPA is involved in Bristol Bay in response to the unprecedented alliance of Tribes and native corporations, sport, and commercial fishing industries, all of whom petitioned EPA to use its authority under the Clean Water Act to step in to help protect our wild salmon, the fisheries, and the people who rely upon them. This response was a collective expression of concern from the community to have certainty that its cultural and economic well-being would be protected.

The EPA responded to our request by conducting a scientific assessment of the watershed and the salmon fishery. EPA has been responsible for several public hearings throughout our region. Ninety-eight percent of the people from Bristol Bay who commented to EPA, more than 1,200 comments all together, supported EPA action, just a remarkable level of agreement and participation from our region. This is an issue that has bipartisan support in the State of Alaska and elsewhere.

EPA should complete its scientific study and address the request to protect Bristol Bay. There is a legitimate national interest in protecting clean water that has, for centuries, supported the people and economy of our region. As a businessperson, I would welcome a regulatory agency telling me right up front the core parameters of a permit that are proposed for my proposed operations.

The pure and abundant waters of Bristol Bay support a salmon fishery that is the very foundation of Bristol Bay, unique in the world, and truly a national treasure. We, the people of the region, know we live in one of the most incredible places on earth. Our region feels threatened to its core by the proposed mine. The threat posed by the proposed Pebble Mine has gone on long enough.

We support EPA, and we urge swift and decisive action under the Clean Water Act to protect Bristol Bay.

Thank you.

[The prepared statement of Mr. Van Vactor follows:]

PREPARED STATEMENT OF NORMAN VAN VACTOR, CEO/PRESIDENT OF BRISTOL BAY
ECONOMIC DEVELOPMENT CORPORATION

Thank you very much for inviting me to testify today. My name is Norman Van Vactor and I am the CEO/President of the Bristol Bay Economic Development Corporation (BBEDC) in Dillingham, Alaska. I have lived and worked in the Bristol Bay region for the last 38 years. For 37 of those years I divided my time between Bristol Bay and Seattle, Washington. I started as a deckhand on fishing tenders working my way through college as a vessel Captain, later joining the Shore Side Management team with Peter Pan Seafoods as a Plant Manager. With time I became the Bristol Bay Manager for Peter Pan Seafoods, one of the largest seafood companies in the United States. My responsibilities included managing the shore-based cannery and the floating processing ships. In 2006 I joined a smaller family-owned fishing company and started a shore-based freezing operation in Dillingham. Subsequently I became the General Manager of Leader Creek fisheries based in Naknek, Alaska.

From operating the oldest continually operating cannery in Alaska, to being involved with the development, construction, and modification of floating processors, to new startups, to taking on regulatory and other issues that preceded my direct involvement, my experiences throughout the fishing industry in Bristol Bay have been varied.

Through these experiences, I have seen first-hand the immense economic and cultural value of the Bristol Bay fishery. Last fall I was offered the opportunity to become the CEO/President of BBEDC. We are a regional community-based corporation charged with developing and enhancing the economic opportunities in the 17 communities that we represent and for the greater Bristol Bay watershed when possible. Our support and constituency is not race-based but residency-based. The indigenous people and folks like myself who call Bristol Bay home have one commonality—our lives and economy focus around salmon.

My testimony today focuses on the importance of the Bristol Bay economic engine—the pristine salmon fishery—and the positive role EPA has played and should play in assisting the people of Bristol Bay in protecting this immensely important economic and cultural resource. First I will define for you the economics of Bristol Bay; second I will speak to my business experiences as a manager of seafood processors in the community and as President/CEO of BBEDC; third I will explain my view on why the location, size and type of the proposed Pebble Mine presents an unacceptable risk to our economy and people; and finally, I will lay out the reasons why my community and others have asked the EPA to step in and use its legal authority to help protect the Bristol Bay watershed.

BRISTOL BAY ECONOMICS

The Bristol Bay salmon fishery is without question large and valuable. The commercial salmon industry has been in place for over 120 years to say nothing of the time period of subsistence and recreational use before that. It is the world's single most valuable wild salmon fishery and provides about 50 percent of the world's sockeye salmon production. The economic importance of the fishery extends well beyond Bristol Bay and Alaska, and is particularly significant to the West Coast States of Washington, Oregon, and California. . . . In fact, the Bristol Bay fishery provides 14,000 jobs to the Nation. Every summer, over 7,000 commercial fishermen fish in Bristol Bay and this provides essential income and additional jobs to watershed residents. The University of Alaska Institute of Social and Economic Research found the Bristol Bay salmon fishery has a total economic output or sales value of \$1.5 billion across the United States (see Attachment 1—retained in Committee's files).

In the just completed fishing season of 2013, over 23 million fish found their way home and about 16 million fish were sustainably harvested. All that in a down biological cycle. Our fishery is robust and healthy because of the pristine and untouched watershed conditions. Consumers, increasingly aware of the healthy attributes of wild salmon vs. farmed salmon, are seeking our wild salmon products. Our fishery and the economic value derived from it, while not without challenges, are looking better than they have for 20 years.

We know we have to invest in our own future. To that end, BBEDC recently acquired a 50 percent stake in Ocean Beauty Seafoods, one of the largest seafood processors and distributors in Alaska. In addition, Silver Bay Seafoods, a new player to the region and largely owned by fishermen, is building a new shore-based processing plant with capitalization in excess of \$40 million. Silver Bay plans on being operational in 2014. These investments in our resource are being done with faith and hope for a continued healthy and sustainable fishery far into the future. Great-

er investment opportunity exists and I have no doubt that others would invest their resources if the cloud of uncertainty, posed by the threat of the Pebble Mine, was eliminated.

In February of 2011, after two years of engaging community members in 27 communities, the people of Bristol Bay drafted the “Bristol Bay Vision Statement” (see Attachment 2—retained in Committee’s files).

As you can see the people of Bristol Bay have a clear vision for the future. That vision is based on the fact that we are a salmon-based community and economy, and the vision is founded on a fish-first policy.

POSITIVE ROLE OF EPA PERMITTING AND ENFORCEMENT IN THE BUSINESS COMMUNITY

My perspective, and the perspective shared by most of the industry at the production level with boots on the tundra and in the boats of BB, is that EPA has been present, fair and consistent. I personally had positive and helpful interactions with EPA during my experience managing the seafood processing community. Further, I found EPA to be effective and fair in permitting and enforcing standards, and this fairness helps promote positive business decisions.

Togiak Seafoods, which is owned in part by one of our member communities, is a good example where EPA provided clarity upfront so that the project could proceed. EPA told folks right off the bat that, given the volume of discharge and the location of the facility, certain criteria must apply to obtain a discharge permit for the site. This early input changed the way the community approached and implemented its business plan. EPA’s input didn’t stop the project; rather it changed it for the better of the community and industry.

We can construct things properly and run our businesses accordingly when we know the necessary standards up-front. This also provides needed certainty for both the community and investors. Standards and regulations are important for the public and regulated community, but they are not enough. We also need strong and consistent enforcement by EPA to make sure that there is a level playing field amongst the regulated industry. Consistent enforcement rewards those in compliance and also provides a clear message to the regulated community that there is a price to be paid for non-compliance with permits intended to protect the environment.

PROPOSED PEBBLE MINE

The location, type, and size of the proposed Pebble Mine—as described in the Northern Dynasty Minerals Ltd.’s own publicly-available documents—presents an unacceptable risk to our people and economy. The proposed mine sits at the headwaters of the Kvichak and Nushagak River drainages, two of the most prolific salmon-producing watersheds in the world. These headwater areas include streams and wetlands that support the essential salmon spawning and rearing habitat of these drainages, and pristine water quality of these areas is critical for salmon production and survival.

The Pebble deposit is a low-grade ore that requires large-scale mining to be economically viable. If fully developed, Pebble Mine would be the largest mine of its type in North America, and would dwarf the combined size of all mines ever developed in Alaska.

Finally, a significant percentage of the ore within the Pebble deposit includes potentially acid-generating properties. The proposed Pebble Mine therefore would require the use of a tailings storage facility where acid-generating tailings would be stored behind a dam in perpetuity.

In short, no iteration of the Pebble Mine plans I have seen is acceptable or good for Bristol Bay. These plans all contain unacceptable risks to the greatest wild salmon run left on the planet.

THE EPA AND BRISTOL BAY

I want to highlight that EPA is involved in Bristol Bay because the community asked EPA to engage and protect the fishery and the people who rely upon it. Our community has received little support from the State of Alaska to date and we therefore turned to the Federal Government. In May 2010, six federally recognized tribes and commercial fishermen petitioned EPA to use its authority under the Clean Water Act to protect our fishery. Other Bristol Bay area tribes, the Bristol Bay Native Corporation, and Bristol Bay commercial and sport fishing groups, among others, also requested that EPA take action to protect Bristol Bay. This was a collective expression of concern from the community to have certainty that its cultural and economic well-being would be protected.

The EPA responded to our request by conducting a rigorous scientific assessment of the watershed and the salmon fishery. The EPA’s Bristol Bay Watershed Assess-

ment allows the EPA to move forward to protect the region based on solid science-based information. In completing its watershed assessment, the EPA conducted two essential peer reviews of its document and supporting studies. The EPA has also been extremely responsive to public comments and concerns, including visiting our region to hold public comment meetings in six villages—Igiugig, Levelock, Naknek, Nondalton, New Stuyahok, and Dillingham. I personally participated in three hearings and meetings that EPA held throughout the Bristol Bay region. To me, the EPA has been very responsive to our concerns.

In addition to visiting the region, EPA had two public comment periods on the watershed assessment document. During the second public comment period, 98 percent of the people commenting from the Bristol Bay region—more than 1,200 people total—sent letters to the EPA in support of process and the watershed assessment, a truly remarkable level of agreement and participation from our region.

The Bristol Bay Watershed Assessment describes the location, size and type of the proposed Pebble Mine and clearly describes the threats to our lifestyle, community, and economic foundation. Again, no iteration of the Pebble Mine plans I have seen is acceptable or good for Bristol Bay.

In my opinion the EPA should develop performance standards that will ensure that we deal with the hard questions about the proposed Pebble Mine up-front, thus providing greater certainty to businesses and the entire Bristol Bay community. The EPA has the legal authority to implement performance standards through the Clean Water Act, Section 404(c). The Riley/Yocom Report from 2011 (executive summary included as Attachment 3—retained in Committee's files) describes the following performance standards that I believe EPA should implement to address proposed mining activities in the Bristol Bay watershed:

1. No discharge of dredged or fill material into salmon spawning and rearing habitat;
2. No discharge of dredged or fill material that is toxic to aquatic life;
3. No discharge of dredged or fill material that requires treatment of runoff or seepage in perpetuity.

EPA should take action *now* to protect Bristol Bay. There is a legitimate national interest in protecting clean water that has for centuries supported the people and economy of Bristol Bay. As a businessman, I would welcome someone telling me up front the core parameters of a permit for my proposed operations.

Our community has been dealing with the uncertainty caused by PLP for many years. In fact, this summer Senator Lisa Murkowski called for a stop to this lengthy uncertainty, stating that the proposed Pebble Mine has promoted “anxiety, frustration, and confusion” in many Alaska communities. I couldn’t agree more. EPA could, by developing performance standards now, go a long way to eliminate that uncertainty.

CONCLUSION

The pure, pristine, and abundant water of Bristol Bay supports a salmon fishery that is the very foundation of Bristol Bay, unique in the world, and which is a national treasure. The people of Bristol Bay know we live in one of the most incredible places on earth—all due to our pristine fishery. And that fishery is threatened to its core by the proposed Pebble Mine.

EPA’s draft watershed assessment has added immense knowledge and value to the discussion concerning Bristol Bay. This information is vital to our community and future activities proposed for the Bristol Bay watershed. And just as we knew which standards would apply when I worked on bringing the Wood River Seafood Plant back to life, so too would responsible mining companies benefit upfront from knowing what standards to apply to prevent unacceptable adverse impacts to salmon fisheries.

In short, the threat to Bristol Bay posed by the proposed Pebble Mine has gone on long enough. EPA should, as soon as possible, finalize the assessment and use its Clean Water Act authority to develop and implement performance standards that would apply to the proposed Pebble Mine. I support EPA, and urge swift and decisive action by it to protect Bristol Bay.

Mr. LAMBORN. OK. Thank you. We will now begin our questioning. Members are limited to 5 minutes, but we may have an additional round.

Let me fill you in on what is happening on the Floor. They are about to start votes. So when that happens, we will continue a little bit further along, then we will go into recess, and it will be about 30 minutes or so before we can come back. And then, at that point, we will resume. And I would ask the patience of each of our witnesses to indulge us while we go over and vote for about 30 minutes, which is coming up fairly soon.

I am going to yield my first 5 minutes of questioning to my colleague, Representative Young of Alaska, for scheduling purposes. And then he will yield to me in return. So, for 5 minutes, Representative Young.

Mr. YOUNG. Thank you, Mr. Chairman, and thanks for holding this hearing. I would like at this time to offer a testimony by Linda Kile and submit it for the record.

[No response.]

Mr. LAMBORN. There is no objection; so ordered.

[The prepared statement of Ms. Kile, submitted by Representative Young for the record, follows:]

PREPARED STATEMENT OF LINDA KILE

My husband and I have placer mining claims in Alaska near the border with Canada. Most of our claims are patented and therefore private property. My husband has 50 years of mining experience and I've been with him for 36 years. Over the years we've been visited by multiple regulatory agencies, all of whom arrived without prior notice, but all of whom sought us out, explained the reason for their visit and we proceeded from there. Our most recent visit by the EPA in no way resembled any of our previous encounters.

This experience began Tuesday, August 20, 2013 with a single engine aircraft circling our camp at various times during the day, as well as flying up and down the creek which passes through our claims. We had no idea who it was or why they were circling our camp.

On Thursday, August 22, 2013 the plane returned and again circled our camp several times and flew up and down the creek. We were becoming quite disturbed because it was now obvious we were under some type of surveillance and we wanted to know who it was and why we were being watched.

At approximately 5:30 p.m. that day I heard several four-wheelers on the road below our camp, which is nothing unusual except the engines were suddenly shut off. I looked over the bank and saw three people wandering around. I headed down the hill toward them to see who they were and ask why they had stopped. As I got closer I was stunned to see that they all were wearing bullet-proof vests and were carrying various weapons. I looked down the road and saw three more armed and vested people with my husband and son. My mind was reeling at this point because I'd never seen anything like that on our mining claims. I approached them and asked who they were. In response one of the men silently pointed to the words on his bullet-proof vest which said "FEDERAL AGENT". I asked what that meant and they said "EPA". I then asked if there was something specific they wanted and they said they were taking water samples for the "Clean Water Act", though I didn't see them take any samples. They said they were going to check all our creeks, two of which actually converged right next to them. I suggested they go ahead and take their samples right there in front of me, but they refused. They said they were going to look around on our claims. I informed them it was private property and was posted as such. Their only response was "Clean Water Act". I also asked them about the aircraft that had been circling us and they denied knowing anything about an aircraft.

At that point they got on their wheelers and drove onto our property over to one of our shaker plants (used for sluicing), dismounted and began taking pictures of the shaker and surrounding area. I went to where my husband and son were talking with the other agents. He too questioned them as to why they were on our property taking pictures and what the pictures were for. The only response to him was the same that I'd received, "Clean Water Act" with no additional explanations. He also asked them about the aircraft and one agent replied that it was their "air support". My husband inquired about the firearms and show of force and the only response to that question was, "It's policy". Two of the agents stayed close to my husband

and son while another was on our property taking pictures of our other shaker box. My husband questioned them about bypassing the "Private Property—No Trespassing" signs and taking pictures and again the only response received was "Clean Water Act".

The six agents eventually left without any further communication with us. My husband, son and I were all very confused and upset about the entire encounter. At no time did any of them ever approach us and identify themselves. They presented no documentation to confirm their identities or explain the purpose of their invasion (the word "visit" is too civil a term for this encounter). We had to approach them. None of us witnessed them take a single water sample, so there is no way for us to verify if they actually did take samples, or if so where those alleged samples came from. The more we processed the encounter the more upset we became. We comply with all regulations and have never been cited for any violations. Suddenly and without provocation we are set upon by six fully armed agents on the ground and two in the air. They violated our property with no regard or respect for "No Trespassing" signs, and left us with the frightening realization that this is happening in the United States of America to law-abiding citizens and it's being perpetrated by our own Government.

On September 14, 2013 there was a meeting in Chicken, Alaska regarding EPA's "visit" to multiple mining operations in that area. This meeting was attended by multiple miners; Sean Parnell, Governor of Alaska; representatives from the offices of Senator Murkowski and Congressman Young; as well as representatives of state legislators, along with Ken Fisher from the EPA in Juneau and Ted Murphy from BLM. Mr. Fisher and Mr. Murphy questioned about the necessity of the blatant show of force, as well as how they determined whom to visit. They stated that the list of mines they visited was a result of lengthy criminal investigations of miners with a history of non-compliance. They felt the weapons were necessary due to reports of heavy criminal activity in the area involving drug and human trafficking, and child endangerment as reported to them by Alaska State Troopers (which the troopers denied).

Mr. YOUNG. And for the gentleman from Oregon, I am going to remind him that he was not there, and there is testimony that they were carrying M-16s and assault shotguns, fully armored, and said, "Police Agents." This is a SWAT team. They did not communicate with any of the people they were investigating, they would not answer. All they would say, "Clean Water Act," "Clean Water Act." This is not the way our government should talk.

They have been visited many times, and regulatory agencies have visited them. They always go in and introduce themselves. This was not Federal land, it was State land, State claims, and patented claims. They broke the law. And any time our government starts doing that without due process of the law, we have lost our government. We are losing it.

There is such a thing as a handshake, say, "Listen, I have a problem. We want to take water samples," and they could have done that. But, no, they came down with the heavy, just like the Park Service is doing in my State. There is no consideration of the human factor. And I think you will find out these small mines have been running, for like you said, 37, 40 years—1895? There have been no complaints, no science. Why the strong arm?

I just want you to think about this. You sit back on that side of the aisle and think, "Oh, the government is so good, let's hug them," when they are, in fact, hurting people. Legitimately not doing so—in fact, they have a process which—they are forcing the little guys—we have heard about the coal mines, we heard about Pebble Mine, we have heard about the State. But let's think about the little guy. You are supposed to be for little guy. You are for big government. Government can't be wrong. Government is always

right. They rolled a 79-year-old man around in the mud, arrested him on nothing charges. You are supposed to be for the little guy. No, you are for big government.

Mr. MAIER, I want to ask you one question. Has much changed in these Fortymile areas, as far as mining goes, in the last 22 years?

Mr. MAIER. We just have a lot more Federal regulations to deal with, so the permitting—

Mr. YOUNG. But the process, though, has not changed?

Mr. MAIER. No. We still fill out our APMA and then—oh, you mean as far as the mining goes?

Mr. YOUNG. Yes.

Mr. MAIER. As to how we mine? No, it is still—we just—we wash the rocks. We do settling ponds now, and do reclamation mandatory since—

Mr. YOUNG. And I want to stress that settling pond, because that was not a requirement when it started in 1895.

Mr. MAIER. No.

Mr. YOUNG. So now you have settling ponds.

Mr. MAIER. Yes.

Mr. YOUNG. And the settling ponds are supposed to reach the quality of drinking water?

Mr. MAIER. Yes.

Mr. YOUNG. Which is very nearly impossible?

Mr. MAIER. Yes, I don't know how you would do that.

Mr. YOUNG. Yes, because now, that is what they are probably basing this on. But they were—were they exempted for a period of time, or this is relatively new?

Mr. MAIER. No—well, in 1986, when the—through ANILCA, and the management plans that were passed through Congress then is when the mandates for mandatory reclamation and water—having ponds and—so—

Mr. YOUNG. Now, the State did this first?

Mr. MAIER. No, that, I think that came, as far as my knowledge, is it came through after ANILCA and the management plans were passed.

Mr. YOUNG. But OK, management. Even EPA at that time wasn't doing the investigation, though.

Mr. MAIER. No, not to my knowledge.

Mr. YOUNG. BLM is making things more difficult for you now? They are trying to put you out of business, is what I am trying to get across.

Mr. MAIER. Yes, the BLM, they are working on a new management plan in the eastern interior, and it is getting far more restrictive. There are, well, for instance, there are six-and-a-half million acres in the Fortymile subunit. The current active mining claims, Federal mining claims, right now on the Fortymile are about 25,000 acres. So that is less than, that is about .4 percent of the Federal land that is open for mineral entry. And now they want to limit more. They want to restrict more.

And our main contention about this is the Federal Government, the BLM, just spent 3 years publishing a 1,400-page monstrous proposal, they are going to redesignate land. They want to put

more restrictions on access. We have a bone of contention with them over access on R.S. 2477's and navigability issues.

We have a plan that Congress passed in 1986. It is the Fortymile management plan. There are plenty of environmental safeguards in there. We, as the district, and the miners in the district, we try every way we humanly can to comply with these mandates.

Mr. YOUNG. That is already the law.

Mr. MAIER. Yes.

Mr. YOUNG. I want everybody to remember, already the law, and now they are trying to change that law. That is the thing that concerns me a great deal.

Mr. Chairman, I know my time is up. I do thank you. And I want to thank the witnesses.

And, Linda, I am sorry I submitted your written testimony. I would like for you to have been able to tell this committee that feeling of private property and these agents not responding to your questions at all.

Again, think about our government. Forget your liberal labels. If you really believe in the people, start thinking about the little people. And shame on you if you don't.

Thank you, Mr. Chairman.

Mr. LAMBORN. OK. We will now have time for one more Member's questions. Then we will go into about a 30-minute recess. Representative Holt.

Dr. HOLT. Thanks. Mr. Hamilton, let me clarify something in your testimony that I am really not sure of.

According to the Coal Facts newsletter, published by the West Virginia Coal Association, has the number of employed coal miners increased or decreased in recent years?

Mr. HAMILTON. It should show a decrease.

Dr. HOLT. Well, in the Coal Facts 2012, the employment figures show 22,000 miners, the highest level in any of the reports on your Web site, an increase of 3,000 over the level from 4 years before. Is it increase or decrease? I am——

Mr. HAMILTON. The 2012 Coal Facts——

Dr. HOLT. I am genuinely——

Mr. HAMILTON [continuing]. Would have contained information on calendar year 2011.

Dr. HOLT. I see.

Mr. HAMILTON. There was a slight blip in employment from 2008 to 2011.

Dr. HOLT. 2011, OK.

Mr. HAMILTON. Basically, due to the increased manpower demands on loss of efficiencies because of every mining company basically mining out of cycle, mining out of sequence, mining areas that they——

Dr. HOLT. OK. Now, Mr. Hamilton——

Mr. HAMILTON [continuing]. Did not engineer, because of the lack of permits.

Dr. HOLT. OK. So it is from the year before.

Mr. HAMILTON. Yes.

Dr. HOLT. But your testimony accuses, I think that is probably the right word, the administration of being directly responsible for declining coal production in West Virginia, from the day of Presi-

dent Obama's inauguration. Do you know what actually happened to national coal production over the first 2 years of the Obama administration?

Mr. HAMILTON. I am not sure about national production.

Dr. HOLT. OK. It increased. Do you know what happened to the national coal production in the first 2 years of the Bush administration?

Mr. HAMILTON. I am not sure.

Dr. HOLT. Actually, it decreased. So, you know, I would caution you against throwing these accusations around about a war.

Mr. HAMILTON. Well, what I know is we produced 165 million tons of coal the year before President Obama took office. This year we will likely produce less than 100 million tons, a loss of 65 million tons of coal over a 4½-year period, and the loss of some 3,500 jobs.

Dr. HOLT. And how much of that do you attribute to the use of natural gas for energy—

Mr. HAMILTON. There has clearly been an influence by the abundance of low-cost natural gas—

Dr. HOLT. I think a—

Mr. HAMILTON. Coal has actually regained most of the lost production to natural gas over the last 18 months, due to the price increases in natural gas. At least—

Dr. HOLT. I mean the use of coal for electricity from 2011 to 2012 was down nearly 13 percent, natural gas up about 21 percent. So again, I am not sure that we can attribute this to a war on coal by the Obama administration.

Mr. HAMILTON. Well, in addition to the lost jobs—

Dr. HOLT. Let me ask Mr. DeFazio if—

Mr. HAMILTON [continuing]. There have been some 300 coal-fired power plants shut down—

Dr. HOLT [continuing]. He has—let me ask Mr. DeFazio—

Mr. HAMILTON [continuing]. West Virginia.

Dr. HOLT [continuing]. In my remaining 2 minutes if he has some questions that he would like to—

Mr. DEFazio. I thank the gentleman, yes. I would like to turn to the gentleman, Mr. Van Vactor, on Pebble.

You know, it's been said that this is this national war, this Federal agency coming in to a place where it is not wanted. Could you tell me who requested the EPA to come in and do this oversight?

Mr. VAN VACTOR. Mr. Congressman through the Chair, it was an incredible coalition, the likes of which we have never seen in the State of Alaska before. As I mentioned, it was the native corporations, it was Tribes, it was the sport fishing industry, it was the commercial fishing industry. We asked EPA to come in because we felt the State wasn't coming in.

Mr. DEFazio. And so you are telling me the commercials and the sports and the Tribes don't get along all the time, huh?

Mr. VAN VACTOR. We do not get along all the time. So this was a very unique instance—

Mr. DEFazio. Right, I get that.

Mr. VAN VACTOR [continuing]. A broadband coalition.

Mr. DEFazio. OK. Now, as I understand it, people also say this is based on a hypothetical. But weren't there documents by the pro-

ponents of the mine that were filed, upon which the analysis was based? And isn't it true that there would be hundreds of thousands of tons of toxic tailings or potentially leachate tailings, that would have to be sequestered forever, in order not to impact water quality?

Mr. VAN VACTOR. No question, Mr. Congressman through the Chair. The facts that the State has, tens upon thousands of pages of documents, which are actually generated by the mining companies themselves, as to the different possibilities and different applications, and different results. All you need to do is go to their own Web site, their own homepage. And it is not just tens of thousands of toxic tons. It is over ten billion tons. And that information comes right from their own homepage.

Mr. DEFAZIO. And you think that this could have an impact on water quality?

Mr. VAN VACTOR. No question, sir.

Mr. DEFAZIO. OK.

Mr. VAN VACTOR. The livelihood of the folks——

Mr. DEFAZIO. How many jobs for the mine versus the sustainable jobs? Last question. I am running out of time.

Mr. VAN VACTOR. Hundreds to maybe 1,500 versus tens of thousands.

Mr. DEFAZIO. That are sustainable forever?

Mr. VAN VACTOR. Absolutely. Sustainable forever and have been around forever.

Mr. DEFAZIO. Great. Thank you. Thank you, Mr. Chairman——

Dr. HOLT. Reclaiming the time, Mr. Chairman, I would like to ask unanimous consent to submit in the record a letter to the subcommittee from Trout Unlimited in support of the EPA's assessment of the Bristol Bay watershed.

[No response.]

Mr. LAMBORN. If there is no objection, so ordered.

Dr. HOLT. Thank you.

[The letter from Trout Unlimited to the Subcommittee, submitted for the record by Representative Holt, follows:]

LETTER SUBMITTED FOR THE RECORD BY REPRESENTATIVE HOLT

TROUT UNLIMITED,
ARLINGTON, VA
OCTOBER 9, 2013.

Hon. DOUG LAMBORN, *Chairman,*
House Subcommittee on Energy and Mineral Resources,
1333 Longworth House Office Building,
Washington, DC 20515.

Hon. RUSH HOLT, *Ranking Member,*
House Subcommittee on Energy and Mineral Resources,
H2-186 Ford House Office Building,
Washington, DC 20515.

DEAR CHAIRMAN LAMBORN AND RANKING MEMBER HOLT:

Trout Unlimited (TU) is writing on behalf of its 150,000 members nationwide to comment on the October 10th Energy and Mineral Resources Subcommittee hearing titled, "EPA vs. American Mining Jobs: The Obama Administration's Regulatory Assault on the Economy." Please include our letter in the hearing record. We wish to take this opportunity to convey our strong support for the Environmental Protection Agency's (EPA) actions in regards to proposed large scale mining in the headwaters of Bristol Bay, Alaska.

TU's mission is to conserve, protect and restore North America's trout and salmon fisheries and their watersheds. Protecting Bristol Bay's world class fishery from the likely harm caused by the proposed Pebble Mine—which would be one of the world's largest open pit mines, located in the headwaters of Bristol Bay's most productive rivers—is our highest conservation priority.

EPA's decision to conduct a watershed assessment on the potential mining impacts in Bristol Bay's headwaters was based on requests from local stakeholders—native Alaskans, commercial and recreational fishermen, lodge owners, and others—to protect the Bristol Bay watershed and the 14,000 recreational and commercial fishing jobs and \$1.5 billion in annual economic activity that it supports. The EPA has done a thorough and commendable job of assessing the risks of mining to the world class fisheries of the Bristol Bay region. When the EPA released its second draft of its watershed assessment, more than 650,000 commenters expressed support for protecting the region's fisheries and for EPA's assessment. Across the country, three out of four comments received were supportive of the EPA's efforts, and in Alaska, the EPA's assessment was supported by 84 percent of statewide residents and an incredible 98 percent of Bristol Bay regional residents.

The watershed assessment found that even in a best case scenario, mining would destroy 87 miles of salmon streams and 2,500 acres of wetlands, and create 10 billion tons of waste which would be stored in perpetuity in one of the most seismically active regions in the State. America's foremost professional fisheries group, the American Fisheries Society (AFS), and hundreds of leading scientists across the Nation agree with TU that the EPA's estimates of habitat and fisheries loss are conservative.

A frequent criticism of the draft watershed assessment is its reliance on a "hypothetical" mind proposal. There is not very much that is hypothetical about this mine. Northern Dynasty Minerals, one of the two principals in the Pebble Limited Partnership (PLP), presented a mine plan to the Securities and Exchange Commission to secure investor support for the Pebble project, and has since lauded the mine's potential benefits through an economic study based on reasonable mining scenarios in the Bristol Bay region. PLP has claimed that a mine scenario does not exist, while at the same time touting the economic value of it to State and Federal officials and their shareholders. PLP cannot have it both ways. Senator Murkowski recently agreed with many stakeholders in Alaska that PLP cannot continue on its path without unveiling a mining plan to the public.¹

Perhaps most telling about the risk presented by this project is the recent decision by Anglo American, one of the world's biggest mining companies, to withdraw from the Pebble Partnership, stating that they were going to "prioritise capital to projects with the highest value and lowest risks." The company did not mention the EPA as a reason for its decision to withdraw. When specifically asked whether their outlook on regulations and permitting had changed, an Anglo American spokesman reiterated that "our decision to withdraw from the project is the result of an internal prioritisation of the many projects that we have in our portfolio."²

If ever the EPA had the authority, and indeed the necessity to protect a body of water, Bristol Bay is it. The EPA has properly assessed the science and allowed a thorough public response to its findings. A coalition of businesses, commercial and recreational fishermen, jewelers, outdoor industries, and Alaskan Natives, represents stakeholders from across the political spectrum who are united in the common purpose of protecting some of the most productive salmon and trout habitat on the planet that possesses huge commercial, subsistence and recreational value.

We believe it is in everyone's best interest for EPA to use its Clean Water Act authorities to set prudent limits on industrial-scale mining that will both protect the region's unsurpassed fishery resources and the economies and communities they sustain, while clarifying for potential mine developers what is and is not permissible so they can make informed business decisions.

Finally, we urge the Subcommittee to listen carefully to the voice of Alaskans on this matter. We appreciate the Subcommittee's invitation to Norm Van Vactor, a commercial fisherman and CEO of the Bristol Bay Economic Development Corporation, who will provide strong testimony in support of protecting Bristol Bay. Former Alaska State Senate President and Republican Majority Leader Rick Halford also opposes the mine, saying "Mining can do a lot of good things, but the bottom line

¹ Letter from Senator Murkowski, July 1, 2013: http://www.energy.senate.gov/public/index.cfm/files/serve?File_id=3b2efb37-cdd2-4203-8568-72c405e2a4e4.

² Why Miners Walked Away From the Planet's Richest Undeveloped Gold Deposit. Bloomberg Businessweek, September 27, 2013: <http://www.businessweek.com/articles/2013-09-27/why-anglo-american-walked-away-from-the-pebblemine-gold-deposit>.

is that this particular place is the last place on earth we should have a sulfide mine so large that it dwarfs the largest open pit mine in North America.”³

The Subcommittee should consider the thousands of Alaskans who commented on the watershed assessment, the majority of whom oppose the mine and support EPA’s scientific assessment. We urge the Subcommittee and other decisionmakers in this process to join local Alaskans in support of the scientifically and economically justified need to protect Bristol Bay.

Sincerely,

STEVE MOYER,
Vice President of Government Affairs.

Mr. LAMBORN. OK. We will now go into recess for roughly 30 minutes. Thank you all for your patience. As soon as we are done voting we will come back and resume.

[Recess.]

Mr. LAMBORN. The subcommittee will come back to order. Thanks for your patience, everyone. We are done voting, so we won’t have to run off again. We can stay here and finish up. And this is an important hearing within the jurisdiction and oversight of the subcommittee, so I am glad we can do this.

I am going to start out asking my first question to Mr. Hamilton.

You mentioned, in your testimony, the tsunami of objection letters that were sent to mining companies in West Virginia after President Obama was sworn in. Can you describe the nature of these objection letters concerning coal mining in West Virginia?

Mr. HAMILTON. The letters, for the most part, appeared to be form letters that were sent to every mining operation in the State that had either a permit pending or recently issued permit, or a permit modification before either the Corps of Engineers or EPA. And they were objection letters objecting to the permit without specificity.

Mr. LAMBORN. And how many, what number are we talking about, what quantity?

Mr. HAMILTON. A hundred.

Mr. LAMBORN. And they were all the same?

Mr. HAMILTON. Yes.

Mr. LAMBORN. Well, that begs the question. Were they thought out, or were they just done en masse to start objections for the sake of objections?

Mr. HAMILTON. They appear to be en masse, and they were issued either the day of or the day following the President’s inauguration in—

Mr. LAMBORN. I don’t see how they could have had time to investigate 100 different pending permits and send out 100 letters on a one-by-one basis. That is not possible.

What is the coal mining industry’s relationship in West Virginia with EPA? What was it like prior to President Obama being sworn in?

Mr. HAMILTON. EPA, as it relates to its role in the State of West Virginia, has always maintained an oversight role with the U.S. Corps of Engineers, in an oversight capacity also with the Office of Surface Mining, but primarily with the Corps of Engineers. They

³EPA Could Move to Stop Pebble Mine, Flyfisherman.com, May 14, 2012: <http://www.flyfisherman.com/2012/05/14/epa-could-move-to-stop-pebble-mine/#axzz2h9dVs3v3>.

were involved with several major comprehensive environmental impact statements that were brought about for various reasons throughout 2000 to 2007 or 2008. They had a presence, but the presence was principally in an oversight capacity.

Mr. LAMBORN. OK, thank you. What do you think, in more general terms, of the EPA's use of science as it relates to coal mining and the operation of coal-fired electrical plants?

Mr. HAMILTON. Well, it appears that most of the science relied on by the EPA as it relates to mining operations and coal-fired generating facilities is science basically held by the agency, reviewed by the agency, and relied on by the agency. There is a widespread disagreement on a lot of the science that the agency relies upon to make its policy in regulatory decisions.

Mr. LAMBORN. Has it all been made public?

Mr. HAMILTON. Some has, some hasn't.

Mr. LAMBORN. Do you have any disagreements with some of the specific applications of their science, or as it might compare to other findings?

Mr. HAMILTON. Quite honestly, we have been put in a situation where we suspect and have disagreements with practically every aspect of the agency's rulemaking and policymaking process.

Mr. LAMBORN. Can you give me an example in my last 58 seconds here?

Mr. HAMILTON. Well, I am not sure, maybe if I could have some clarification to the question.

Mr. LAMBORN. OK. I will tell you what. Ponder that a minute in case we have a second round.

Mr. HAMILTON. OK.

Mr. LAMBORN. Mr. Fogels, you said States should have more flexibility in mining regulations. What could Congress do to achieve that?

Mr. FOGELS. Thank you, Mr. Chairman. We believe that there could be some flexibility built into both the Clean Water Act and CERCLA, and maybe some other Federal laws, that might allow the States to a little more effectively manage their natural resources. In the Clean Water Act, we are currently evaluating whether the State of Alaska should go for primacy in wetlands permitting.

And the big issue for us there is which wetlands do we actually get jurisdiction over. We feel the Clean Water Act is a bit ambiguous in that. And we would certainly think that it is worth discussing whether the Clean Water Act could be tightened up to allow the States to take the majority of the wetlands within their States.

Mr. LAMBORN. Thank you very much. We are now going to go to Representative Fleming. Oh, excuse me. Representative Fleming?

Dr. FLEMING. Thank you, Mr. Chairman. Mr. Van Vactor, the title of today's hearing is, "EPA Versus American Mining Jobs," and you have heard testimony that really focuses on the impact of NPA—excuse me, EPA regulations, and over-the-top enforcement of regulations, guns drawn, you know, SWAT-style tactics, and so forth. And I am enamored—excuse me. I am moved by the fact that you are enamored with the EPA in all of that.

But you note that the economic impact of the Bristol Bay fisheries, and particularly the salmon fishery, rather, to the economy of the Bristol Bay region. Are you aware of the proposed EPA regulations on discharges from fishing vessels?

Mr. VAN VACTOR. Mr. Congressman through the Chair, first of all, I don't know that I am enamored, other than I said I was in support of EPA action in Bristol Bay.

Second, as it relates to the commentary about guns drawn, I can't speak to the situations that folks like Mr. Sheldon experienced—

Dr. FLEMING. Well, you weren't there, neither was I—

Mr. VAN VACTOR. Right.

Dr. FLEMING. So there is no reason to get in it. But the point is, what about the EPA regulations for fishing vessels? That is what I am asking about.

Mr. VAN VACTOR. What I can speak to, sir, is that, as it relates to large fishing vessels, large fishing processors such that were utilized in the Bristol Bay salmon fishery, I am somewhat familiar with the discharge permits required by those.

Dr. FLEMING. Do you agree with them?

Mr. VAN VACTOR. Yes, I do.

Dr. FLEMING. And you are not concerned about the effect on the fishing industry, the impact, the economic impact, and the problems that that may cause?

Mr. VAN VACTOR. I am always concerned about options and deviations. But at the end of the day, the rules and regulations that are in place provide for a level playing field. We know who we have to talk to to get discharge permits—

Dr. FLEMING. If it caused a 30 percent decline in your revenues, and unemployed 3,500 people from the fisheries industry, would you be comfortable with that?

Mr. VAN VACTOR. For the sake of the greater good, and I am not sure where you are getting those statistics—

Dr. FLEMING. Well, I am giving an example here with the mining industry. Your fellow witness next to you, this is what he said has happened to the mining industry. And so, I am just simply applying that to the fishing industry, and to see if you would feel the same way about the EPA if there was a war on fishing, the way there has been a war on coal.

Mr. VAN VACTOR. If fishing vessels, sir, were discharging in an area that was improper, that was distracting and destroying the habitat and the run, we would be willing to forego that harvest.

Dr. FLEMING. But—

Mr. VAN VACTOR. And the jobs associated with it.

Dr. FLEMING. But again, an all-out—again, reduction of 30 percent production, the retroactive removal of permitting, the loss of 3,500 jobs, you would be comfortable with that type of loss, and also vessels being boarded by armed people with flak jackets and, I guess, rifles or shotguns, as we have heard discussed, would you be comfortable with that, Mr. Van Vactor?

Mr. VAN VACTOR. Mr. Congressman through the Chair, let me speak to that, I guess your last comment, first.

I can speak to dozens, if not hundreds, of boarding incidents that would have taken place just as late in 2013 which are considered

routine in our industry. The State of Alaska, we refer to them as the brown shirts; they are the enforcement division for Fish and Game, boards our vessels all the time.

Dr. FLEMING. Without identifying themselves, they typically board the vessel and start picking up equipment, looking around, and not even identifying themselves?

Mr. VAN VACTOR. They come on board, they are uniformed, for the strict purpose of identifying and checking crewmen's licenses.

Dr. FLEMING. So then, what effect on the Bristol Bay salmon fishery would there be if EPA decided to enforce the discharge regulations by sending these armed enforcement guards? What would be the impact? How would the industry local to you there, how would they react to that?

Mr. VAN VACTOR. Mr. Congressman through the Chair, I have been in the seafood side of the industry for close to 38 of my 40 years in Bristol Bay. And in many instances I have been inspected by EPA investigators. In my case, when they showed up they showed up with state troopers who were armed.

I don't know what the different protocols are for different agencies, depending upon the situation they are in, and I don't think it is my place to question that.

Dr. FLEMING. OK. So if they show up, state troopers with guns and so forth, does that mean that people who are fishermen and have boats somehow are a threat to law enforcement? Why would they show up with all of that armament?

Mr. VAN VACTOR. Mr. Congressman through the Chair, again, I don't want to question our law enforcement agencies for the protocol in which they respond to specific situations.

In my particular region, we have a bill that is being sponsored by our State representative right now, asking the State of Alaska to allow our village public safety officers to be armed, the very reason being that just 2 months ago one of our community members was killed in the act of trying to approach a house where a domestic violence event was taking place.

Dr. FLEMING. Well, that is domestic violence. That is a completely different subject.

Well, my time is up, Mr. Chairman. Thank you.

Mr. LAMBORN. Representative Cramer.

Mr. CRAMER. Thank you, Mr. Chairman and members of the panel, witnesses, for this irrevocable gift of your time today. I just want to focus in on one line of questioning, I guess, and perhaps statements made earlier about the dispute, I guess, that this administration is waging a "war on coal." And, in doing so, I want to remind folks that it was earlier this year that a White House climate advisor, in anticipation of the President's climate change speech, I think it was in June, told the *New York Times* that a war on coal is exactly what is needed.

I would also want to draw attention to the previous Chairman of this Committee, who said that, and this was Chairman Nick Rahall, a Democrat, who said, "I am dead set against the EPA and their scheme to issue emission standards that would make it next to impossible for new coal-fired power plants to be constructed. This callous, ideologically driven agency continues to be numb to the economic pain that their reckless regulations cause. Today's

rule is just the latest salvo in the EPA's war on coal, a war I have unwaveringly soldiered against. And I will work tirelessly to prevent such an ill-conceived and illogical plan for moving forward." This was Democrat Chairman of this Committee, Nick Rahall.

Do you feel like you are in a war on coal, each of you?

Mr. HAMILTON. Yes. We certainly are, in the State of West Virginia, where Democrats and Republican office holders alike have joined together to try to push back and bring some sanity back to the level of oversight and enforcement by our Federal agency.

Mr. CRAMER. I can tell you that in North Dakota, where I was once a coal regulator, the Democrat and Republican members of our delegation are united as well, and all refer to it as a war on coal.

Sir, do you feel like you are fighting a war on coal?

Mr. MAIER. I am a gold miner, so the coal question—

Mr. CRAMER. Certainly a good point, yes.

Mr. MAIER. But I can see it from the perspective, but I am not—

Mr. CRAMER. You probably feel more like you are in a war than most people, as a matter of fact.

Mr. MAIER. Yes. Well, with the overwhelming Federal regulations, if we can't get help, I mean I am just here representing small families, small miners. And we are, this is, the final straw, if we can't stave off these overwhelming regulations, we can't survive.

Mr. CRAMER. Yes. Let me ask you, because one of the things that I sometimes find somewhat frustrating is when debate—see, I like rigorous debate, I enjoy it. And I like it to be civil, but I also like it to be honest. And is calling it a war on coal, from your perspective, necessarily all that bad a characterization of what we are up against?

Mr. VAN VACTOR. Congressman Cramer through the Chair, you are looking at me, sir, so I am assuming you are—

Mr. CRAMER. I am talking to you, yes.

Mr. VAN VACTOR. One, I am not an authority on the coal mining industry, and so I would be happy to pass along some salmon recipes and invite all of you to Alaska and take you around the wonderful state, Bristol Bay. So, specifically as it relates to that issue, I will defer.

I don't see this as a war, sir. I see these as separate issues, issues that are all delicate, and that we need to take into balance. I come from a family of South Dakota gold miners in the Black Hills. And I find myself in Alaska, harvesting fish.

Mr. CRAMER. Yes. And fair enough. I would just say, Mr. Chairman, my point that I wanted to make is I don't know that it is so dishonest; well, personally, I think it is very honest to refer to it as a war on coal. And I don't really know why my friends who feel like they are fighting the other way are ashamed to call it a war on coal. I mean, when the administration themselves have referred to it as a war on coal, I don't know, and the previous Democrat Chairman has referred to it as a war on coal.

So, you know, I appreciate what you are up against, and I certainly appreciate those of you that are especially standing up for the little guy, as Representative Young referred to, or the working men and women whose livelihoods are at stake here. And I think

that the economic pain that overreach of regulation imposes upon the working men and women and the businesses of our country are not being, adequately being considered, at all.

So, I appreciate all of your testimony with regard to whatever industry it is, the area, and all sides. And I yield back.

Thank you, Mr. Chairman.

Mr. LAMBORN. Thank you. Representative Benishek.

Dr. BENISHEK. Thank you, Mr. Chairman. I am Dan Benishek. I represent the northern half of Michigan, where there are a lot of mining opportunities as well, not coal, but iron, copper, gold in our area. And we have had a lot of trouble with the EPA, getting permitted to mine the resources that are there, although our area has been a mining area for over 100 years, easily. We have multiple difficulties dealing with the EPA to get these mines permitted.

But I just kind of wanted to, and it is very frustrating to me, talk to you, Mr. Maier, about this episode you had with the EPA. You have been in this area for a decade, as I understand, right? And you have dealt with regulatory agencies in the past, right?

Now, apparently, this recent raid was quite a different episode for you. Can you tell us a little bit more about that? Maybe I missed the details in your testimony.

Mr. MAIER. Yes. Linda Kile, who is here with me, I didn't have firsthand experience, because they flew over me multiple times, but they didn't come on the ground, because I am 30 miles off the highway. It is a little more complicated to get to my place. But Ms. Kile was visited, and she has a very disturbing story.

But, yes, we deal with regulators on a constant basis. And when we do have State regulators come, or BLM come to inspect us, they are always polite. Yes, they come armed because of the environment we live in. But they will come out and introduce themselves. They find us, they know us by name. We know who they are. And they do their inspections, they go. If we are doing something wrong, they will say, "Hey, you guys should straighten this out." And normally we have no problems at all.

Dr. BENISHEK. So this episode apparently was more of an intimidating one? I don't want to put words in your mouth, but tell me more about it.

Mr. MAIER. Well, we feel, and all the miners feel, that it was very intimidating. It was very disconcerting, that this can happen. You know, just to have regulators come in like they did, in the full armor, body armament, and you know, with their automatic weapons, shotguns, just to surround people and not bother to even introduce yourselves. Yes, it was very disconcerting. But—

Dr. BENISHEK. They didn't introduce themselves? They didn't have a warrant of any kind?

Mr. MAIER. No.

Dr. BENISHEK. Did they take anybody away with them?

Mr. MAIER. No, they did not.

Dr. BENISHEK. Did they make any effort to contact you before they showed up, to notify you that they were coming?

Mr. MAIER. No. In fact, in the EPA's statement, they said it was casual and consensual. Well, no, nobody knew they were coming. In fact, they did have the DEC in the loop, the State Department of Environmental Conservation. But as far as the rest of the agen-

cies we normally—well, the BLM knew about it, too, because we were trying to find out where the list came from of the mine sites they were going to visit. And so far we have no answers from the EPA or the BLM. They kind of just point their fingers at each other.

Dr. BENISHEK. Each other, yes.

Mr. Fogels, you know, I mentioned that we have had trouble with the EPA, as well. I mean we tried to get this county road built in my district to service the mine. And, you know, the rules the EPA put out there that we had to comply with changed on a monthly basis. So it was difficult to comply. And also, they were so unreasonable. They wanted a moose-proof fence for the entire length of the road, along with designated moose crossings, which I never heard of, ever in the history of the country, having 20, 44 miles of moose-proof fencing. These are really outrageous demands, never heard of before.

Did you have experience with similar type of things in your job?

Mr. FOGELS. Yes, Mr. Congressman. I would say that we do in Alaska have similar experiences. I talked earlier in my testimony about the Environmental Protection Agency's propensity now to elevate 404 decisions, after the Army Corps has made them, to a higher level. And then they will deem water body and aquatic resource of national importance, and then that just sort of results in a whole bunch of new requirements and stipulations in the Army Corps' wetlands permit.

Dr. BENISHEK. A body of water such as what?

Mr. FOGELS. Well, one example, we were permitting a bridge across the Tanana River, which is a large, glacial river near Fairbanks. And the EPA deemed that water body an aquatic resource of national interest. And so I remember their justification was it was a tributary to the Yukon and it had salmon in it. And so, many rivers in Alaska have salmon in them, and a lot of rivers in Alaska are tributaries to the Yukon. So, by that definition, just about any river in interior Alaska would be an aquatic resource of national interest.

Dr. BENISHEK. All right. I think my time is up. Thank you.

Mr. LAMBORN. Representative Daines.

Mr. DAINES. Thank you, Mr. Chairman. I am Steve Daines. I represent the State of Montana. So you are seeing the entire congressional delegation from Montana here, as the at-large Member. I want to thank you all for the testimony today, and I want to start with Mr. Hamilton.

You know, in Montana, we have the largest coal reserves in the country. And often times that is forgotten. We think about Big Sky County, which I am a fifth-generation Montanan, and I love to spend a lot of time above 10,000 feet and fly fishing and hunting and recreating outdoors. We also have tremendous natural resources in coal, oil, and gas. And more recoverable coal than any other State in the Union.

In fact, the coal mining industry employs over 1,200 people in our State. We get more than half of our electricity from coal, and that keeps energy prices low. Unlike a lot of the movie stars that have moved out to Montana and built their starter castles, most Montanans are living paycheck-to-paycheck, and are fighting to try

to make ends meet, as they fight for their families and raise their kids.

We are already starting to see, in my State of Montana, the devastating consequences of President Obama's war on coal. And I won't get into the debate whether it is a war, what have you. I mean it is semantics, I suppose. But I do know these regulations are starting to have a tremendous impact on the business.

But let me just say this. Since elected to Congress here last fall, I have been developing great relationships with our tribal leaders in Montana. And normally they don't come knocking on the door of Republicans. I will tell you what. They are knocking on my door, and we are having some great discussions about their future and their vision for prosperity on the reservations.

One of my dear friends, in fact, I walked to kindergarten with his cousin, Rachel Old Coyote, her cousin is now Chairman Darrin Old Coyote of the Crow Tribe. Let me tell you what Chairman Old Coyote said in Montana just a month ago in front of a couple of U.S. Senators in Missoula. He said this, and I quote, "A war on coal is a war on our families and our children," Crow Tribal Chairman Darrin Old Coyote said.

And here is why. They have 50 percent unemployment on the Crow reservation. It would be much, much higher, if it weren't for the fact that 70 percent of the coal mining jobs there are held by Crow members. In April they signed a 145-million-ton coal deal with Westmoreland. In June, a 1.4 billion-ton deal with Cloud Peak. The revenues, by the way, from these mining operations on the Crow reservation make up two-thirds of the Tribe's non-Federal budget. It is very, very important, and the Tribes are very concerned that Washington, DC and the overreach of the EPA now and these regulations are having an effect on their ability, their sovereignty to develop their resources for the future and for their children.

In fact, the consequence of this war on coal, the J.E. Corette Power Plant in Billings, which was directly impacted by the EPA's Federal regs, is going to be mothballed in 2015. That is in Billings, Montana. The closing of that plant is \$3 million a year in lost tax revenue to the county, and 27 good-paying union jobs. Coal in Montana has already accounted for \$1.9 billion in tax revenues, the severance tax in the State of Montana, which helps us fund infrastructure and so forth in a State that struggles to always make ends meet. Thankfully, we are running a surplus right now in Montana, but in part due to a strong Ag economy and a natural resource economy.

So, with that as backdrop, Mr. Hamilton, I would like to ask you about the EPA's new performance standards, and how it relates to coal-fired power plants. It makes plain good business sense to always look forward to where the industry is headed. As Wayne Gretzky said, "You skate to where the puck is headed." How do you see the new proposals impacting the coal industry, and what does that mean for the cost of energy for American families?

Mr. HAMILTON. Thank you. We are very concerned over those new performance standards that were alluded to by the other gentleman on the committee. And, of course, he indicated about a proposed standard. Those standards have now been released. They

were released last month, in September, and they establish a baseline, an emission baseline that just cannot be met today with existing technology that is available to be employed on coal-fired power stations.

We reference a lot of the administrative and regulatory and policy issues that have served to cut our permits off, that have served to heighten the enforcement activities of our Federal Government. It is often referred to those of us in the business as a death by 1,000 cuts, because that is what has happened. When you strangle and have a permitorium for years, you basically cutoff new opportunities, new commerce.

The new source performance standards for new coal-fired power plants all but ensures that there will never be—never be—another coal-fired power generator financed or constructed in this country. It effectively eliminates coal and coal-fired generated electricity from the all-of-the-above energy strategy that I have heard so much about. It completely removes coal from being a consideration, going forward.

Mr. DAINES. OK. I am out of time, Mr. Chairman.

Mr. LAMBORN. Thank you. Representative Gohmert.

Mr. GOHMERT. Thank you, Mr. Chairman, and thank you to the witnesses for being here.

Just to follow up on what was being said, I come from east Texas, and we do have lignite. Not the quality of the coal that you gentlemen are used to seeing. But we have over 1,000—actually, a lot more than that that are related to the coal being mined and the energy production.

But something I have noticed. When people are out of work and they can't find jobs, they don't seem to be nearly as interested in the environment. I don't know if you have noticed that in the States from which you come, but it seems like if there is industry going that is being regulated to make sure it is not polluting, people have jobs, they can have the luxury of caring about the environment. I am just curious.

Mr. Fogels, how bad has the air and water gotten during the years of coal mining, at least the last 10 or 15 years?

Mr. FOGELS. Congressman, thank you. Well, in Alaska we are proud of our air and water quality. It is pretty spectacular. It has been for a long time, and it continues to be to this day. We have one major coal mine in Alaska that operates, and a number of, you know, I guess in comparison to the Lower 48, fairly small coal-fired power plants. But I think the regulation is maintaining the environmental quality quite nicely. All six of our—

Mr. GOHMERT. Well, do you care if Alaska gets dirty water or air?

Mr. FOGELS. Yes, I would, Congressman.

Mr. GOHMERT. I mean you are kind of a trustee of it.

Mr. FOGELS. Absolutely. That is my job, to protect it.

Mr. GOHMERT. Because I get the impression when EPA officials come out, many times they act as if they are the only people in the world that care about the environment, but they don't seem to care anything at all about the people. And yet, it seems like the more I have gone around the different States, including Alaska, the State officials care every bit as much, and maybe more, than any-

body at the EPA about the environment. I would imagine that the people I have not met in State government in Alaska feel the same way, don't they?

Mr. FOGELS. Oh, absolutely, Mr. Congressman. And we are very proud of our record. Again, we have six operating mines. And we hear a lot of rhetoric about how bad mining can be, environmentally, and a lot of the problems. Most of those are legacy problems. Our problems in Alaska, we have good mines with good environmental records, and we are proud of our regulatory—

Mr. GOHMERT. Well, let me ask Mr. Hamilton. You have seen people out of work that have worked in the coal industry. You have seen people that work in the coal industry. When people are unemployed, and you have a bunch of folks that are, do you see them being able to care as much for the environment as they do when they are employed?

Mr. HAMILTON. I think they do care about the environment, and I think they do what they can to maintain a good environment, as it relates to the air and the water. I am not sure they appreciate trading their job for perhaps an incremental increase in environmental quality that is questionable.

Mr. GOHMERT. Yes.

Mr. HAMILTON. I think therein lies the personal conflict.

You know, we are very proud of our environment. You know, we are a heavily mining-intensive industry, but we have one of the best tourism businesses, you know, that you will find throughout the country. People—

Mr. GOHMERT. You have a gorgeous State.

Mr. HAMILTON [continuing]. Come to West—I mean we are a shining example that you can have both a robust, energy-producing industry, and a pretty pristine environment. In fact, the Boy Scout Jamboree, 50,000 Boy Scouts chose West Virginia as their home. And it just so happened that that parcel of land used by the Jamboree—50,000 come from all over the country—

Mr. GOHMERT. Right.

Mr. HAMILTON [continuing]. Every single State was represented—is on a reclaimed mine land.

Mr. GOHMERT. Well, and why wouldn't they? As John Denver said, it is almost heaven. If you want to get all the way there, you can come on down to Texas and we welcome you there. But—

Mr. HAMILTON. Well, we joined the Big 12. That gets us a little closer.

Mr. GOHMERT. Well, that is true, that is true. But, anyway, there seems to be a happy medium somewhere in there. And I don't think the EPA has been as concerned, or has recognized the importance of having a vibrant economy, because everywhere you go in the world, if the economy has tanked, if it is bad, they care about the environment, but they do not have the luxury of doing anything about it.

So, thank you for all that you gentlemen do to try to make this, your State, this world, a better place. Thanks for being here.

Mr. LAMBORN. OK, thank you. We will have a second, but brief, round of questions.

And I would like to ask you, Mr. Fogels. There has been some concern expressed to me a little bit earlier. I was talking to some

folks in the audience about the sensitive waterways and fish habitat and so on in the area of Alaska that we are talking about here. And there is the strong belief that a mine of this nature, a mine of this size, would be impossible to open and operate without an adverse impact on fish and water quality.

Is it possible that the EPA and the State of Alaska could impose conditions that would have to be followed by a mine operator that would prevent such damage, is it impossible to have the two together?

Mr. FOGELS. Mr. Chairman, we believe that it is definitely not impossible to have the two together. The issue we are facing is, even though the Bristol Bay watershed assessment has this hypothetical mine design, that is not really the mine design that will be submitted to us if the company decides to go forward. We need specific plans to evaluate what the real environmental impacts will be, and that is the process that should take place. And in that process, you can figure out the engineering details of how the environment would be protected. Then we can judge whether that would work or not.

I mean engineering science is amazing. You can always beef up the systems at a cost. So it may be that those protections cost too much for the mine to actually be economical. We don't know that yet. All we are saying is that we need the opportunity to let the real process run its course, and let the experts evaluate the mine design. And it may very well be possible to design something that protects the fisheries in Bristol Bay.

Mr. LAMBORN. So you are saying it is premature to draw that conclusion absolutely.

Mr. FOGELS. Yes, sir.

Mr. LAMBORN. What has the EPA done in a preemptive way that seems to be jumping the gun?

Mr. FOGELS. Well, Mr. Chairman, I think the whole Bristol Bay watershed assessment is jumping the gun. They are looking at a preemptive veto of wetlands permitting in eight million acres of our lands.

So you know, again, Pebble aside, this is not about Pebble for us. It is about putting new regulations on our land that would hamper the way we can develop it in the future. And they are not considering best practices, they are not considering stipulations, mitigation measures. And that, to us, is more than troublesome. We are very alarmed by this whole prospect of perhaps losing almost 10 percent of our land entitlement.

Mr. LAMBORN. Mr. Hamilton, in West Virginia does extensive coal mining and sport fishing coexist?

Mr. HAMILTON. Yes. They do coexist in almost every single watershed where mining takes place. There is example after example of stream water quality improvement that is made on an annual basis. And it has been occurring for decades and decades.

Mr. LAMBORN. And can you tell me, bring me up to date on the West Spruce Mine operation? Is that the correct name?

Mr. HAMILTON. Spruce Number One Mine.

Mr. LAMBORN. Spruce, can you bring me up to date on that?

Mr. HAMILTON. And this is probably, yes sir. This probably ranks amongst one of the most studied mining complexes that you will

find anywhere not only in our little State, but anywhere in the country, or maybe even the world. It underwent one of the most stringent, comprehensive environmental assessments of any industrial permit of that magnitude, or operation of that magnitude.

In fact, I think it was 6 or 7 years that all the pre-mining data for the permit, all the engineering work, was being developed. It was being developed in concert with State and Federal agencies, the Office of Surface Mining, the West Virginia Department of Environmental Protection, the U.S. Army Corps of Engineers, and even EPA, all eventually signed off on that permit.

It was signed off on and approved in 2007, only to have—and there was equipment put, several millions of dollars of development, equipment spreads were put onsite, the infrastructure to accommodate the mine was developed, miners were employed. And when this administration took office, they initially threatened to veto that permit, wanted to study it more.

And, quite frankly, you know, we have heard from practically every manufacturer, every other industry around this country that is involved with the Corps and require a 404 permit questioning the specifics, the conditions. Because, quite frankly, they were concerned that if EPA could go back and revoke a lawful approved permit, that could set a precedent and happen elsewhere.

That mine is idle today. That mine has been idled. EPA has followed through with their plans to rescind and veto that permit. They first tried with our State, then they tried with their own sister agency, U.S. Corps of Engineers, that went through the concerns raised by the current EPA Administration, point by point, and answered every single concern, addressed every single condition. This is the U.S. Corps of Engineers, and they basically joined with the West Virginia DEP and said, “That mine and that permit ought to continue as it was approved, because of all the years of study and evaluation that went into it.” And that is being litigated today.

The company met with EPA. They had a series of meetings that went over months and months, and they tried to accommodate every concern, redesign the mine, reengineer the mine, take into consideration, you know, all the economics, the geology, and just could not meet the demands of EPA.

Mr. LAMBORN. Thank you for the update. Representative Gohmert.

Mr. GOHMERT. Thank you again. I want to ask a question again of Mr. Fogels, because, as you know, we are here about the U.S. Fish and Wildlife Service and mining, whether or not they can be compatible. But this administration obviously is trying to preemptively close off an area in Alaska that is the size of West Virginia. And, according to the U.S. Fish and Wildlife national survey of fishing, hunting, and wildlife-associated recreation found that 305,000 fishermen in West Virginia contributed \$750 million to the economy in West Virginia, only on sport fishing.

So, I ask you, Mr. Fogels, do you find that in Alaska that mining and fishing seem to get along there? And if West Virginia, that obviously has mining, and has that significant amount of fishing, can support nearly a billion dollars in income from fishing, do you

think the same area, the same sized area in Alaska, could also accommodate one mine?

Mr. FOGELS. Mr. Congressman, I think to answer your question, yes, I do believe that some type of mining activity could certainly happen on that eight million acres with very little impact to the fish, and maintain the vibrant fisheries that are for both subsistence users, sports users, and commercial users. There is no question that we have the technology to allow mining to happen within that eight million acres responsibly to coexist.

We are living proof of that already. Our mines in Alaska already have healthy fish populations downstream. Some mines have actually improved the habitat for and the water quality for fisheries. So modern mining and the modern mining regulatory process is working in Alaska, and it can work in Bristol Bay. Whether it can work for a mine the size of Pebble, again, as I mentioned before, we don't know yet, because no one has given us the plans yet.

Mr. GOHMERT. But you certainly think that is conceivable. And the plans, once submitted, would have to be approved, right?

Mr. FOGELS. Yes, sir. Very thoroughly reviewed.

Mr. GOHMERT. And I might mention to you some years back, actually my freshman term here, we had field hearings around the country, and we had hearings in Washington State. And we had heard from one power company there that they were required to, well, it cost them \$8 million that the Federal Government cost them to preserve fish in a river. And the \$8 million lost or cost actually saved 20 salmon.

And, at the time, I raised the issue wouldn't it be possible to have a whole lot less money than that produce a whole lot more fish, salmon, to be exact. And there were groups there that said, "Absolutely not. There is no fish you can ever produce in a hatchery that could ever be the same in any way, really, as the fish that are spawned in the wild." And since then we have the benefit of information that indicates you really can't tell the difference, if they are hatched in a hatchery, or they are hatched out in a stream.

So, I just encourage you to keep that in mind, as well. They can work together. And, actually, if nature had its way, there would be a lot more extinct species around this country than there are now. But thank you all for being here today.

Mr. LAMBORN. I want to thank everyone also for being here, and you have come a long way in many cases, and we appreciate your testimony and appreciate answering our questions.

Members of the committee may have additional questions for the record.

And if you are given those, I would ask that you respond to those in writing.

If there is no further business, then without objection the committee is adjourned.

[Whereupon, at 3:20 p.m., the subcommittee was adjourned.]

[ADDITIONAL MATERIALS SUBMITTED FOR THE RECORD]

PREPARED STATEMENT OF CONGRESSWOMAN NIKI TSONGAS

It is absurd that we are holding this hearing without a single witness from the Environmental Protection Agency. As my friends on the other side of the aisle well know, the Administration was unable to send a witness because of the ongoing Republican shutdown and the Federal worker furloughs. The Federal Government is shut down today for one reason: we have been denied any chance of voting on the clean funding bill passed by the Senate. No piecemeal approach, no temporary fix here or there is going to put an end to this reckless shutdown. Only one bill can re-open all of the government today, and it is time for the House to vote on the straightforward, Senate-passed funding bill.

Conducting this hearing with full knowledge that someone from the EPA would be unable to attend is irresponsible and demonstrates a complete disregard for the important work that they do. This is particularly worrisome in regards to the proposed Pebble Mine near Bristol Bay, Alaska, which is of considerable interest to my home State of Massachusetts.

The EPA is currently conducting the Bristol Bay Watershed Assessment, and early drafts have found that large-scale mining in the Bristol Bay Watershed could cause irreparable damage to the fisheries and the jobs they support. The watershed assessment found that even in a best case scenario, mining would destroy 87 miles of salmon streams and 2,500 acres of wetlands. The Bristol Bay Watershed is home to the world's most valuable wild salmon fishery, valued at over \$1.5 billion annually and supports an estimated 12,000 jobs. Even fishermen from my home State of Massachusetts make the journey to Alaska each year to fish during the 3-month salmon season.

In Massachusetts, we have seen the devastating impacts of the decline of the fishing industry. The proposed mine near Bristol Bay would present an unavoidable and unacceptable risk to the salmon fishery in Alaska and the thousands of people who depend on it for their family's livelihood. Fishermen from across Massachusetts and New England stand in strong opposition to large-scale mining in Bristol Bay because it could cause undue harm to a community that has a long and proud history of commercial fishing.

I urge my colleagues to ask the Speaker to bring the Senate CR to the floor for a vote so we can bring an end to this Republican shutdown so that agencies like the EPA can get back to work and provide certainty to the many people who depend on the Bristol Bay fisheries to support their families.

[LIST OF DOCUMENTS SUBMITTED FOR THE RECORD RETAINED IN THE COMMITTEE'S OFFICIAL FILES]

- Alaska Legislature Letter
- Mr. Van Vactor's Attachments that Accompanied his Testimony:
 1. Institute of Social and Economic Research, University of Alaska Anchorage, The Economic Importance of the Bristol Bay Salmon Industry (2013)
 2. Bristol Bay Regional Vision Statement (2011)
 3. Riley/Yocom, Mining the Pebble Deposit: Issues of 404 Compliance and Unacceptable Environmental Impacts Executive Summary (2011)
- Mr. Fogels' Attachments that Accompanied his Testimony:
 1. IMCC Resolution Federalism Funding
 2. IMCC Resolution Financial Responsibility Bonding
 3. IMCC WGA Resolution on Bonding